

United States

Circuit Court of Appeals

For the Ninth Circuit.

Vrl
2250

THE L. McBRINE COMPANY, LIMITED,

Appellant,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-partners doing
business under the name and style of BALKAN TRUNK
& SUITCASE CO.,

Appellees.

THE L. McBRINE COMPANY, LIMITED,

Appellant,

vs.

HERMAN KOCH, doing business under the name and style
of H. KOCH & SONS, and HAROLD M. KOCH, WIL-
LIAM L. KOCH, and REBECCA KOCH,

Appellees.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 454

Upon Appeals from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*: and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Admission of Genuineness of Documents.....	71
Answer, Amended (Silverman).....	10
Answer (Koch)	16
Answers of Defendant to Plaintiff's Interrogatories	56
Answers of Defendant to Plaintiff's Further Interrogatories	75
Answers to Defendant's Interrogatories, Plaintiff's	84
Appeal:	
Cost Bond on.....	95
Designation of Contents of Record on (Appellant's) (Circuit Court of Appeals).....	449
Designation of Contents of Record on (Appellant's Supplemental) (Circuit Court of Appeals)	454
Designation of Contents of Record on (Appellees') (Circuit Court of Appeals).....	451
Designation of Contents of Record on (Appellees' Supplemental) (Circuit Court of Appeals)	453

Index	Page
Designation of Contents of Record on (District Court)	103
Notice of (Koch).....	94
Notice of (Silverman).....	93
Order re Cost Bond on.....	94
Statement of Points on (Circuit Court of Appeals)	448
Statement of Points on (District Court).....	99
Attorneys of Record, Names and Addresses of	1
Bill of Particulars, Plaintiff's (Koch).....	41
Bill of Particulars, Plaintiff's (Silverman).....	30
Certificate of Clerk to Transcript of Record.....	109
Complaint (Koch)	6
Complaint (Silverman)	2
Conclusions of Law (Koch).....	89
Conclusions of Law (Silverman).....	87
Cost Bond on Appeal.....	95
Decree, Final (Koch).....	92
Decree, Final (Silverman).....	90
Demand for Admission of Facts.....	61
Designation of Contents of Record on Appeal (District Court)	103
Designation of Contents of Record on Appeal (Appellant's) (Circuit Court of Appeals).....	449

Index	Page
Designation of Contents of Record on Appeal (Appellant's Supplemental) (Circuit Court of Appeals)	454
Designation of Contents of Record on Appeal (Appellees') (Circuit Court of Appeals).....	451
Designation of Contents of Record on Appeal (Appellees' Supplemental) (Circuit Court of Appeals)	453
Findings of Fact and Conclusions of Law (Koch)	88
Findings of Fact and Conclusions of Law (Silverman)	86
Interrogatories, Defendant's	82
Interrogatories, Plaintiff's (Koch).....	52
Interrogatories, Plaintiff's Further (Koch).....	74
Motion and Notice of Motion for Bill of Par- ticulars	26
Names and Addresses of Attorneys of Record	1
Notice of Appeal (Koch).....	94
Notice of Appeal (Silverman).....	93
Order of Consolidation (Circuit Court of Ap- peals)	447
Order of Consolidation (District Court).....	98
Order re Cost Bond on Appeal.....	94
Order Transmitting Original Exhibits (Koch)	102

Index	Page
Order Transmitting Original Exhibits (Silverman)	102
Reporter's Transcript (for detailed index see "Testimony")	112
Statement of Points Relied on on Appeal (Circuit Court of Appeals).....	448
Statement of Points Relied on on Appeal (District Court)	99
Stipulation and Order to Take Deposition (Koch)	24
Stipulation and Order to Take Deposition (Silverman)	23
Stipulation re Printed Copies of Patents (Koch)	72
Stipulation re Printed Copies of Patents (Silverman)	71
Testimony	112
Exhibits for defendants:	
A—File wrapper and contents of Shoemaker Patent No. 1,878,989..	482
B—British patent to Schwarzenberger	530
C—British patent to Duverge.....	534
D—Austrian patent to Storch.....	538
E—Oath of Austrian patent to Storch, No. 116,893	546

Index	Page
Exhibits for defendants (cont.):	
F—Book of patents.....	548
F1—Burchess Patent No. 1,081,014	549
F2—Boyd Patent No. 1,185,971.....	553
F3—Fasel, et al., Patent No. 1,382,964	558
F4—Steuwer Patent No. 1,641,705	564
F5—Winship Patent No. 1,728,223	568
F6—Wheary Patent No. 1,799,877	576
G—Book of patents.....	585
G1—Boden Patent No. 935,958.....	586
G2—Simons Patent No. 1,208,221	593
G3—Tiedeman Patent No. 1,435,673	597
G4—Lengsfield Patent No. 1,661,484	602
G5—Lengsfield Patent Re. 17,177	606
G6—Hopkins Patent No. 1,861,274	610
G7—Cuthbert Patent No. 1,184,931	614
G8—Cahn Patent No. 1,572,703.....	618
H—Book of patents.....	623
H1—Von Ohlen Patent No. 906,153	624
H2—O'Donnell Patent No. 1,094,087	631
H3—O'Neill Patent No. 1,150,058	635
H4—Shroyer Patent No. 1,200,248	643

Index	Page
Exhibits for defendants (cont.):	
H5—Langmuir Patent No. 1,698,848	651
H-6—Laprade Patent No. 1,742,656	656
H7—Storch Patent No. 1,794,653...	661
H8—Pownall Patent No. 1,810,786	666
H9—Hamlin Patent No. 1,869,418	673
I—Levine Patent No. 2,091,931.....	679
M—Production list of Larkin Specialty Co.	683
N—Ledger sheet of Larkin Specialty Co.	684
O—Duplicate bill rendered Koch & Son from Larkin Specialty Co.....	684
P—Ledger sheet of June, 1928 sales.....	685
Q1—Defendants' Interrogatories	685
Q2—Answer to Defendants' Interrogatories	687
U—Drawing illustrating operation of Storch suitcase fixture, the defendants' suitcase fixture, the Wheary suitcase fixture, and the Shoemaker suitcase fixture.....	690
Exhibits for plaintiff:	
1—Shoemaker patent No. 1,878,989.....	455

Index	Page
Exhibits for plaintiff (cont.):	
7a—Photograph of H. Koch & Sons wardrobe case	468
7b—Photograph of H. Koch & Sons wardrobe case	469
8a—Photograph of Silverman wardrobe case	470
8b—Photograph of Silverman wardrobe case	471
13—Letters defendants admit as genuine	472
Witnesses for defendants:	
Kantrow, Albert	
—direct	334
Kapps, Frank	
—direct	310
—cross	315
Koch, Maurice P.	
—direct	290
—cross	300
—redirect	307
—recross	309
—recalled, direct	329
—cross	331
Locke, William J.	
—direct	342
—cross	355

Index	Page
Witnesses for defendants (cont.):	
Merryfield, Thomas E.	
—direct	320
—cross	327
Silverman, Sol	
—direct	340
—cross	341
Witnesses for plaintiff:	
Koch, Harold	
—direct	283
Ritter, A. A. (Deposition)	
—direct	166
—cross	190
—redirect	197
Roemer, Irving C.	
—direct	199
—cross	227
—redirect	266
—recross	275
—redirect	281
—recalled, direct	371
—cross	420
—redirect	443
Shoemaker, Emanuel J. (Deposition)	
—direct	113
—cross	127
—redirect	148
—recross	158

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etc., et al.

In the United States District Court for the North-
ern District of California Southern Division

Civil Action No. 21271R

For Infringement of United States Letters Patent
No. 1,878,989

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-
partners doing business under the name and
style of BALKAN TRUNK & SUITCASE
CO.,

Defendants.

BILL OF COMPLAINT [1*]

I.

The jurisdiction of this Court is based upon the
patent laws of the United States.

II.

The plaintiff, The L. McBrine Company, Limited,
is a corporation organized under the laws of the
Province of Ontario, Canada, having its principal
place of business at Kitchener, Ontario, Canada.

III.

The defendants, Sol Silverman and Sam Silver-
man, are citizens of the United States and resi-

*Page numbering appearing at foot of page of original certified
Transcript of Record.

dents of San Francisco, California, having a regular and established place of business located at 946 Mission Street, San Francisco, California, at which place the said Sol Silverman and Sam Silverman conduct their business as co-partners under the name and style of Balkan Trunk & Suitcase Co. [2]

IV.

On September 20, 1932, United States Letters Patent Number 1,878,989 were duly and legally issued to plaintiff for an invention on Hand luggage, the application for said patent having been filed in the name of Emanuel J. Shoemaker, and prior to the grant of said Letters patent Number 1,878,989, by an assignment in writing duly executed and recorded, the plaintiff herein became and is now vested with all right, title and interest in and to said Letters Patent Number 1,878,989; and since September 20, 1932 plaintiff has been and still is the owner of said Letters Patent. A copy of said Letters Patent is attached hereto as Exhibit "A" and made a part thereof, and plaintiff is ready to produce as and when this Honorable Court may direct a duly certified copy of said Letters Patent, together with a duly certified copy of the assignment heretofore referred to.

V.

Upon information and belief, defendants, Sol Silverman and Sam Silverman, individually and jointly, in doing business as Balkan Trunk & Suit-

case Co., have for a long time past been and still are infringing said Letters Patent no. 1,878,989 by making, selling, and using hand luggage embodying the patented invention, and will continue to do so unless enjoined by this Court.

VI.

Plaintiff, prior to the filing of this Bill of Complaint, has given due notice to the defendants of their infringement of said patent. [3]

VII.

Plaintiff has granted non-exclusive licenses to others to manufacture, use and sell Hand Luggage made according to and embodying the invention of said Letters Patent; that manufacturers to whom licenses have been granted by the plaintiff, have made and sold within the United States a large number of articles of Hand Luggage embodying the invention of said patent; and that the infringement by said defendants is injurious to the rights which the plaintiff and its licensees are rightfully entitled to enjoy under said patent.

Wherefore, Plaintiff demands a preliminary and final injunction against further infringement by the defendants or any of them, and those controlled by any or all of the defendants, an accounting for profits and damages, an assessment of costs against the defendants, and for such other and further re-

lief as the circumstances and facts of this case may warrant or justify or which equity may require.

THE L. McBRINE COMPANY,
LIMITED,
a corporation of Kitchener, Ontario, Canada,

Plaintiff.

By CURTIS B. MORSELL

A. L. MORSELL JR.

633 Empire Building, Milwaukee,
Wisconsin.

TOWNSEND & HACKLEY,

CHAS. E. TOWNSEND,

ROY C. HACKLEY, JR.,

Crocker Building,

San Francisco, California.

(Of Counsel for Plaintiff)

Attorneys for Plaintiff.

[Printer's Note: For Exhibit "A" attached hereto see Plaintiff's Exhibit No. 1 set out in the Book of Exhibits.]

[Endorsed]: Filed July 20, 1939, Walter B. Maling, Clerk, By B. E. O'Hara, Deputy Clerk.

[4]

In the United States District Court for the North-
ern District of California, Southern Division

Civil Action No. 21273-R

For Infringement of U. S. Letters Patent
No. 1,878,989

THE L. McBRINE COMPANY,
LIMITED,

Plaintiff,

vs.

HERMAN KOCH, doing business under the name
and style of H. Koch & Sons, and HAROLD
M. KOCH, WILLIAM L. KOCH, and RE-
BECCA KOCH,

Defendants.

BILL OF COMPLAINT [14]

I.

The jurisdiction of this Court is based upon the
patent laws of the United States.

II.

The plaintiff, The L. McBrine Company, Limited,
is a corporation organized under the laws of the
Province of Ontario, Canada, having its principal
place of business at Kitchener, Ontario, Canada.

III.

The defendant, Herman Koch, is a citizen of the
United States and a resident of San Francisco,
California, having a regular and established place

of business located at 73 Beal Street, San Francisco, California, at which place the said Herman Koch conducts his business under the trade name of H. Koch & Sons. [15]

IV.

The defendants, Harold M. Koch, William L. Koch, and Rebecca Koch are respectively sons and daughter of said Herman Koch and are citizens of the United States, residing in San Francisco, California, and upon information and belief, said Harold M. Koch, William L. Koch, and Rebecca Koch are active in the conduct of the business of H. Koch & Sons.

V.

On September 20, 1932, United States Letters Patent Number 1,878,989 were duly and legally issued to plaintiff for an invention on Hand Luggage, the application for said patent having been filed in the name of Emanuel J. Shoemaker, and prior to the grant of said Letters Patent Number 1,878,989, by an assignment in writing duly executed and recorded, the plaintiff herein became and is now vested with all right, title and interest in and to said Letters Patent Number 1,878,989; and since September 20, 1932 plaintiff has been and still is the owner of said Letters Patent. A copy of said Letters Patent is attached hereto as Exhibit "A" and made a part hereof, and plaintiff is ready to produce as and when this Honorable Court may direct a duly certified copy of said Letters Patent, together with a duly certified copy of the assignment heretofore referred to.

VI.

Upon information and belief, defendants, Herman Koch, Harold M. Koch, William L. Koch, and Rebecca Koch, individually and jointly, in doing business as H. Koch & Sons, have for a long time past been and still are infringing said Letters Patent Number 1,878,989 by making, selling and using Hand Luggage embodying the patented invention, and will continue to do so unless enjoined by this Court. [16]

VII.

Plaintiff, prior to the filing of this Bill of Complaint, has given due notice to the defendants of their infringement of said patent.

VIII.

Plaintiff has granted non-exclusive licenses to others to manufacture, use and sell Hand Luggage made according to and embodying the invention of said Letters Patent; that plaintiff, as well as manufacturers to whom licenses have been granted, have made and sold within the United States a large number of articles of Hand Luggage embodying the invention of said patent; and that the infringement by said defendants is injurious to the rights which the plaintiff and its licensees are rightfully entitled to enjoy under said patent.

Wherefore, Plaintiff demands a preliminary and final injunction against further infringement by

the defendants or any of them, and those controlled by any or all of the defendants, an accounting for profits and damages, an assessment of costs against the defendants, and for such other and further relief as the circumstances and facts of this case may warrant or justify or which equity may require.

THE L. McBRINE COMPANY,
LIMITED,

a corporation of Kitchener,
Ontario, Canada,

Plaintiff.

By CURTIS B. MORSELL

A. L. MORSELL J

633 Empire Building, Mil-
waukee, Wisconsin.

Attorneys for Plaintiff.

TOWNSEND & HACKLEY,

CHAS. E. TOWNSEND,

ROY C. HACKLEY, JR.,

Crocker Building,

San Francisco, California.

(Of Counsel for Plaintiff)

Exhibit "A" attached to the Bill of Complaint herein is exactly the same as Exhibit "A" in Case No. 21271-R [Set out as Plaintiff's Exhibit No. 1 in the Book of Exhibits.] [18]

[Endorsed]: Filed July 20, 1939. Walter B. Maling, Clerk. By B. E. O'Hara, Deputy Clerk. [17]

[Title of District Court and Cause—21271-R.]

AMENDED ANSWER

To the Honorable, the Judges of the District Court
of the United States, in and for the Northern
District of California:

The defendants, answering plaintiff's complaint
on file herein, say:

I.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment contained in paragraph II of the complaint. [19]

II.

Defendants admit the allegations of paragraph III of the complaint.

III.

Defendants, answering paragraph IV of the complaint, admit that Letters Patent of the United States No. 1,878,989 were issued to plaintiff.

IV.

Defendants, answering paragraph V of the complaint, deny that they, or either of them, jointly or individually, have infringed the said Letters Patent.

V.

Defendants admit that plaintiff has notified them of the existence of said patent, but deny that they have infringed the said patent.

VI.

Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VII of the complaint.

VII.

Defendants, further answering, aver that the alleged improvements set out in the said Letters Patent No. 1,574,864 did not in fact or in law arise to the dignity of invention, but merely required in their assemblage the skill of an ordinary mechanic versed in the art to which the said alleged invention appertained, and therefore, were not patentable under the law; and further aver that the said invention was not a true combination, but merely collections of well known features, which was made and used prior to the alleged invention of the patent in suit, and constituted under the law, if anything, a mere aggregation, and therefore said Letters Patents are invalid and of no effect; and further answering, aver that the said alleged [sic] invention purporting to be embraced in the said Letters Patent in suit is narrow and restricted in their character and was made so during the prosecution of the application for patent before the Patent Office, whereby said plaintiff is estopped to ask for any broad construction of the claims now appearing in said patent and has abandoned to the public the said broad invention originally claimed but crossed; and further answering, avers that the said alleged

invention purporting to be embraced in the said Letters Patent in suit, even if it did constitute invention, was the invention of others than Shoemaker.

VIII.

Further answering, defendants aver that the said alleged invention purporting to be embraced in the said patent in suit, or at least the substantial parts thereof, were known and used by others in this country prior to the date of the supposed invention by Shoemaker.

IX.

Defendants aver that the alleged improvements of the invention embraced in the said Letters Patent in suit, or all material and substantial parts thereof, have been in public use or on sale in this country for more than two years prior to the filing of the application underlying the said patent, and/or prior to the invention thereof by the said Shoemaker.

X.

Further answering, defendants aver that the said Emanuel J. Shoemaker was not the original, true and sole inventor or discoverer of the alleged improvements or invention purporting to be covered by the said Letters Patent in suit, or any material or substantial part thereof, but the said invention, and all material or substantial parts thereof, had been disclosed to the public by others, invented by others, or patented to others than said Emanuel J. Shoemaker prior to the date of the alleged inven-

tion [21] thereof by the said Emanuel J. Shoemaker, and/or more than two years prior to December 24, 1928, as appearing in divers prior letters patent of the United States and foreign countries and printed publications as follows, to wit:

Patentee	Date of Patent	Patent No.
Van Ohlen	December 8, 1908.....	906,153
Burchess	December 9, 1913.....	1,081,014
O'Donnell	April 21, 1914.....	1,094,087
O'Neill	August 17, 1915.....	1,150,058
Boyd et al.	June 6, 1916.....	1,185,971
Shroyer	October 3, 1916.....	1,200,248
Simmons	December 12, 1916.....	1,208,221
Fasel et al.	June 28, 1921.....	1,382,964
Tiedemann	November 14, 1922.....	1,435,673
Steuwer	September 6, 1927.....	1,641,705
Lengsfeld	March 6, 1928.....	1,961,484
Lengsfeld	March 1, 1929.....	Re. 17,177
Langmuir	January 15, 1929.....	1,698,848
Winship	September 17, 1929.....	1,728,223
Laprade	January 7, 1930.....	1,742,656
Wheary et al.	April 7, 1931.....	1,799,877
Storch	March 3, 1931.....	1,794,653
Pownall	June 16, 1931.....	1,810,786
Hopkins	May 31, 1932.....	1,861,274
German to Storch	September 3, 1928 (application filed).....	511,407
Austrian to Storch	May 29, 1929..... (application filed March 21, 1928)	113,171
Austrian to Storch	March 25, 1930..... (application filed September 1, 1928)	116,893
British of 1926	.....	265,475
British of 1922	.....	174,647

XI.

Further answering, defendants aver that prior to the date of the alleged invention by Shoemaker of the alleged improvements purporting to be covered by the said Letters Patent in suit, every material and substantial part of the luggage made by defendants, insofar as the same is relied upon by plaintiff to support its charge of infringement, was previously invented by L. Storch of Vienna, Austria, and was constructively invented by practice in the United States on September 1, 1928, by his filing an application in Austria on that date, fully disclosing the said alleged invention, and by his filing an application in the United States within twelve months thereafter, to wit, on the 9th day of May, 1929; that an Austrian patent, No. 116,893, was issued on March 25, 1930, on said Austrian application, and that a corresponding patent, No. 1,794,653, dated March 3, 1931, was issued on said United States application; and that all parts of the disclosure contained in the said United States Letters Patent No. 1,794,653 and not claimed therein became dedicated to the public as an improvement, effectively and constructively reduced to practice in the United States prior to the alleged invention thereof by said Shoemaker.

XII.

Further answering, defendants aver that they are manufacturing and selling luggage of the general type complained of by plaintiff under the Le-

vine United States Letters Patent No. 2,091,931, dated August 31, 1937.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray that the complaint be dismissed, and that defendants recover from plaintiff their costs and disbursements in this suit.

J. E. TRABUCCO

Attorney for Defendants,
Russ Building, San Francisco,
California. [23]

Receipt of a copy of the foregoing Amended Answer is acknowledged this 21st day of December, 1939.

TOWNSEND & HACKLEY

ROY C. HACKLEY, JR.

Attorneys for Plaintiff.

Receipt of a copy of the foregoing amended answer is acknowledged this 19th day of December, 1939.

TOWNSEND & HACKLEY

ROY C. HACKLEY, JR.

Attorneys for Plaintiff

[Endorsed]: Filed Dec. 20, 1940. [24]

[Title of Court and Cause—No. 21,273-R.]

ANSWER

The defendants above named, and each of them, answering the bill of complaint on file herein, state that:

1.

Defendants admit the allegations contained in paragraph I of the bill of complaint.

2.

Answering Paragraph II of the bill of complaint, the defendants are without knowledge as to the corporate existence and principal place of business of the plaintiff and therefore generally and specifically deny each and every allegation contained in said paragraph II.

3.

Defendants admit the allegations contained in paragraph III of the bill of complaint.

[25]

4.

Defendants generally and specifically deny each and every allegation contained in paragraph IV of the bill of complaint, and in this regard allege that defendants Harold M. Koch and William M. Koch are employees working in manufacturing luggage, and defendant Rebecca Koch is an employee working as bookkeeper and stenographer.

5.

Answering paragraph V of the bill of complaint herein defendants are without knowledge and deny

specifically and generally each and every allegation contained in said paragraph, except that defendant Herman Koch has seen what purports to be a copy of alleged Letters Patent of the United States #1,878,989, purporting to have been issued to plaintiff on September 20, 1932.

6.

Defendants deny generally and specifically each and every allegation contained in paragraph VI of the bill of complaint.

7.

Answering paragraph VII of the bill of complaint defendants generally and specifically deny each and every allegation contained in said paragraph, except that defendant Herman Koch received certain correspondence from plaintiff's attorneys with respect to the patent in suit.

8.

Answering paragraph VIII of the bill of complaint defendants are without knowledge as to whether plaintiff has granted any license to anyone and whether or not plaintiff or any licensees or any one, have made and sold a large or any number of articles embodying the alleged invention of said alleged Letters Patent, or at all, and defendants deny that any acts of defendants are infringements on or injurious to any purported [26] rights of plaintiff and of its alleged licensees or of either of them, and deny that plaintiff or its alleged licensees are rightfully or otherwise entitled to enjoy any rights under said patent, or at all.

9.

For a further and separate defense defendants allege that the alleged inventions or discoveries described and claimed in the Letters Patent in suit are not inventions or discoveries or the proper subject-matter of Letters Patent of the United States, but in view of the state of the art existing at and prior to the said alleged inventions by the patentee, were each the result of mere mechanical skill and judgment.

10.

For a further and separate defense defendants allege that, because of the state of the art as it existed at the time of the filing the application for the Letters Patent in suit, and because of the cancellation of claims and the limitations placed thereon during the prosecution of said application, the said Letters Patent in suit, if valid at all, which the defendants deny, are valid only for the things specifically described therein, and that the claims of said Letters Patent as thus limited in scope by the state of the prior art are not infringed by defendants.

11.

For a further and separate defense defendants allege with respect to each of the claims of the Letters Patent in suit, that each claim is not for a true combination in the sense of the patent laws, but is for a mere unpatentable aggregation.

12.

For a further and separate defense defendants allege that said Emanuel A. Shoemaker was not the

original, first, or any inventor, or discoverer of the alleged invention or [27] inventions said to be patented in and by said Letters Patent No. 1,878,989 here in suit, or any material or substantial part thereof, but that prior to the alleged invention or more than two years prior to the application for the Letters Patent in suit, the said alleged invention, if it be an invention, sought to be patented in said Letters Patent here in suit, and every material and substantial part thereof were indicated, disclosed, described and/or patented in and by each of the following Letters Patents of the United States and foreign countries, and had been invented known, used, publicly used, and sold by each of the patentees and at the places respectively named in each of said Letters Patent, and each of said patentees was the first and original inventor thereof and at all times was using reasonable diligence in adapting and perfecting the same, and the respective places of residence of said patentees are set forth in each Letters Patent, to-wit:

Name	Number	Date
Van Ohlen	906,153	Dec. 8, 1908
Burchess	1,081,014	Dec. 9, 1913
O'Donnell	1,094,087	Apr. 21, 1914
O'Neill	1,150,058	Aug. 17, 1915
Boyd et al.....	1,185,971	June 6, 1916
Shroyer	1,200,248	Oct. 3, 1916
Simmons	1,208,221	Dec. 12, 1916
Fasel et al.....	1,382,964	June 28, 1921
Tiedemann	1,435,673	Nov. 14, 1922
Steuwer	1,641,705	Sept. 6, 1927
Lengsfeld	1,661,484	Mar. 6, 1928
Lengsfeld	Re. 17,177	Mar. 1, 1929

Name	Number	Date
Langmuir	1,698,848	Jan. 15, 1929
Winship	1,728,223	Sept. 17, 1929
Laprade	1,742,656	Jan. 7, 1930
[28]		
Levine, et al.....	1,799,521	April 7, 1931
Wheary et al.....	1,799,877	April 7, 1931
Storch	1,794,653	March 3, 1931
Pownall	1,810,786	June 16, 1931
Hopkins	1,861,274	May 31, 1932
German to Storch.....	511,407	Sept. 3, 1928
(Application filed)		
Austrian to Storch.....	113,171	
Austrian to Storch.....	116,893	Sept. 1, 1928
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British of 1926.....	265,475	
British of 1922.....	174,647	

and also in many other patents of this and foreign countries, as well as many printed publications, at present unknown to defendants but which, when found and their numbers, names and dates ascertained, defendants will ask leave to have inserted in this answer, wherefore the said Letters Patent of the United States No. 1,878,989 is invalid and void and of no effect to secure any exclusive right to the plaintiff.

13.

As a further and separate defense defendants allege that for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the truth relatively to his invention or discovery or more than is necessary to produce the desired effect.

14.

For a further and separate defense defendants allege that said Letters Patent No. 1,878,989, here in suit, was and is invalid and void, because the said Emanuel J. Shoemaker was not the original and first inventor or discoverer of the alleged [29] invention or inventions purported to be patented in and by said Letters Patent but the same and every material and substantial part thereof were, prior to the alleged invention thereof by said Emanuel J. Shoemaker, invented by, if they be any invention or inventions, or known to and used by Maurice P. Koch, 1983 Jefferson Street, San Francisco, California, and were used and sold by him at San Francisco, California.

15.

For a further and separate defense defendants allege that the said Letters Patent No. 1,878,989, here in suit, was and is invalid and void because said Emanuel J. Shoemaker surreptitiously or unjustly obtained said Letters Patent for that which was in fact invented by Maurice P. Koch, 1983 Jefferson Street, San Francisco, California, who was using reasonable diligence in adapting and perfecting the same.

16.

Further answering the bill of complaint on file herein defendants aver upon information and belief that said Letters Patent No. 1,878,989 is invalid and void because things substantially the same as the alleged inventions described and claimed there-

in or a material and substantial part or parts thereof had, before the alleged inventions or discoveries thereof by said Emanuel J. Shoemaker, or more than two years before applications for Letters Patent therefor by said Emanuel J. Shoemaker, been known and publicly used by others in this country, the names and residences or addresses of whom defendants claim leave to add when sufficiently informed thereof.

17.

Defendants further aver that plaintiff is estopped to assert infringement by defendants or to maintain this suit by the reason of the delay and laches on the part of plaintiff in bringing the suit. [30]

Wherefore, said defendants, and each of them, deny that the plaintiff is entitled to the relief prayed for, or any part thereof, and the defendants pray to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

HERMAN KOCH,

doing business under the
name and style of H. KOCH
& SONS,

HAROLD M. KOCH,

WILLIAM L. KOCH

REBECCA KOCH

By GEORGE B. WHITE

Attorney for Defendants.

Receipt of copy of the herein answer on this 21st day of December, 1939, is hereby acknowledged.

TOWNSEND & HACKLEY

ROY C. HACKLEY, Jr.

Attorneys and Counsel for Plaintiff.

[Endorsed]: Filed Dec. 20, 1939. [31]

[Title of District Court and Cause—No. 21271-R.]

STIPULATION

It is hereby stipulated by and between the parties hereto, acting through their respective counsel, that plaintiff, at the time of proceeding pursuant to order of the above entitled court, dated September 28, 1939, to take the deposition of Emanuel J. Shoemaker at Milwaukee, Wisconsin, on October 10, 1939, may at the same time take the deposition of the witness [32] A. A. Ritter, named in the Notice of taking said depositions heretofore served upon defendants; and that plaintiff may likewise take the deposition of such other witnesses, on behalf of plaintiff, as may be available at the time and place aforesaid, it being provided, however, that reasonable notice as to additional witnesses may be requested by defendants if they so desire.

It is further stipulated that the above mentioned depositions shall be entitled and taken in the following cases, and each of them, pending in this court, as well as in this action: The L. McBrine Company, Limited, v. Herman Koch, doing business under the name and style of H. Koch & Sons, and Harold M. Koch, William L. Koch and Re-

becca Koch, Civil Action No. 21273-R; and The L. McBrine Company, Limited, v. Harold Maund, doing business under the name and style of Vogue Luggage Co., and Clifford C. Cassidy, Civil Action No. 21272-S. The original of said depositions, or a copy thereof certified by the Notary Public before whom said depositions are taken, shall be filed in this case.

Dated: October 3, 1939.

TOWNSEND & HACKLEY
 CHAS. E. TOWNSEND
 ROY C. HACKLEY JR.,
 Of Counsel for Plaintiff.
 J. E. TRABUCCO
 Attorney for Defendants

So Ordered:

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed Oct. 4, 1940. [33]

[Title of District Court and Cause—No. 21273-R.]

STIPULATION

It is hereby stipulated by and between the parties hereto, acting through their respective counsel, that plaintiff, at the time of proceeding pursuant to order of the above entitled court, dated September 28, 1939, to take the deposition of Emanuel J. Shoemaker at Milwaukee, Wisconsin, on October 10, 1939, may at the same time take the deposition of the witness [34] A. A. Ritter, named in the notice of taking depositions heretofore served upon

defendants; and that plaintiff may likewise take the deposition of such other witnesses, on behalf of plaintiff, as may be available at the time and place aforesaid, it being provided, however, that reasonable notice as to additional witnesses may be requested by defendants if they so desire.

It is further stipulated that the above mentioned depositions shall be entitled and taken in the following cases, and each of them, pending in this court, as well as in this action: The L. McBrine Company, Limited, v. Sol Silverman and Sam Silverman, co-partners doing business under the name and style of Balkan Trunk & Suitcase Co., Civil Action No. 21271-R; and The L. McBrine Company, Limited, v. Harold Maund, doing business under the name and style of Vogue Luggage Co., and Clifford C. Cassidy, Civil Action No. 21272-S. The original of said depositions, or a copy thereof certified by the Notary Public before whom said depositions are taken, shall be filed in this case.

Dated: October 3, 1939.

TOWNSEND & HACKLEY
CHAS. E. TOWNSEND
ROY C. HACKLEY JR.,

Of Counsel for Plaintiff

GEORGE B. WHITE

Attorney for Defendants.

So Ordered:

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed Oct. 4, 1939 [35]

[Title of District Court and Cause No. 21271-R.]

MOTION AND NOTICE OF MOTION FOR
BILL OF PARTICULARS

To The L. McBrine Company, Limited, and to its
attorneys:

You, and each of you, will please take notice that on Monday, the 18th day of September, 1939, at ten o'clock a. m. of said day, or as soon thereafter as counsel can be heard, in the courtroom of the above entitled Court, in the United States Court House in the Post Office Building, located at the northeast corner of Seventh and Mission Streets, San Francisco, California, the above named defendants, through their attorneys, and pursuant to [36] Rule 12 (E) Federal Rules of Civil Procedure, will move this Honorable Court for an order directing the plaintiff to furnish defendants with a Bill of Particulars with respect to the following matters which plaintiff has failed to aver in its complaint with sufficient definiteness or particularity to enable the defendants to properly prepare a responsive pleading thereto or to prepare for trial:

I.

Which of the claims of the letters patent in suit will plaintiff rely upon at the trial and urge that defendants have infringed.

II.

Precisely what does plaintiff assert or claim is new and patentable in each of the claims of the patent in suit charged to be infringed.

III.

Precisely where, in defendants' alleged infringing device or devices, plaintiff asserts there is found the features set forth as new and patentable in response to paragraph I hereof, and in that connection that plaintiff:

(a) Point out by reference characters applied to a drawing or cut of defendants' alleged infringing device or devices the elements of each of the claims of the patent in suit alleged to be infringed;

(b) Point out by reference characters applied to a drawing or cut of defendants' alleged infringing device or devices the features set forth as new and patentable in response to paragraph I hereof.

IV.

By a reference character applied to each of the figures of the patent in suit wherein such a part appears, point out precisely "a garment supporting member", set forth in the claims [37] of the patent in suit.

V.

By a reference character applied to each of the figures of the patent in suit wherein such a part appears, point out precisely "a garment supporting means", set forth in the claims of the patent in suit.

VI.

Precisely in what lines of the specification of the patent in suit is "a garment supporting member" described, the said element being set forth in the claims of the patent in suit.

VII.

Precisely in what lines of the specification of the patent in suit is “a garment supporting means” described, the said element being set forth in the claims of the patent in suit.

VIII.

By a reference character applied to a drawing or cut of defendants’ alleged infringing device or devices, point out precisely what part thereof plaintiff asserts corresponds to “a garment supporting member”, set forth in the claims of the patent in suit.

IX.

By a reference character applied to a drawing or cut of defendants’ alleged infringing device or devices, point out precisely what part thereof plaintiff asserts corresponds to “a garment supporting means”, set forth in the claims of the patent in suit.

X.

With respect to the patent in suit, state precisely:

(a) The date and place of conception of the alleged invention disclosed by the said patent and defined by the claims thereof;

(b) The date and place of the first disclosure of the [38] said alleged invention and to whom such disclosure was made.

(c) The date and place of the beginning of the first drawings of the said alleged invention, and by whom made and when and where completed.

(d) The date and place of the beginning of the first written description of the said alleged invention, and by whom written and when and where completed.

(e) The date and place of the first reduction to practice of the said alleged invention.

(f) The date and place of the first public use of the said alleged invention, and by whom used.

(g) The date and place of the first commercial introduction and/or sale of the said alleged invention (1) anywhere, (2) in Canada, (3) in the United States, and by whom introduced and sold in each of said places.

Dated: September 11, 1939.

(s) J. E. TRABUCCO

Attorney for Defendants,
Russ Building, San Francisco, Calif.

Receipt of a copy of the foregoing notice and motion is hereby admitted this 11th day of September, 1940.

TOWNSEND & HACKLEY
ROY C. HACKLEY, JR.,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 11, 1940. [39]

[Title of District Court and Cause—No. 21271-R.]

PLAINTIFF'S BILL OF PARTICULARS

Particular I:

The claims which Plaintiff will rely on are the following: 1, 2, 4, 8, 10, 11, 12, 13, 14, 18, 19, 22, 23, 24, 25, 26 and 27.

Particular II:

Each of the relied upon claims of the patent in suit is a complete statement of what Plaintiff believes to be new and [40] patentable. Therefore, the combinations defined by the claims specified in Particular I respectively define the alleged new and patentable structures.

Particular III:

The attached photograph exhibits, plaintiff's exhibits 8a and 8b, are reproductions of a wardrobe suitcase manufactured and sold by defendants prior to the filing of a Bill of Complaint herein. The wardrobe case itself is in evidence as plaintiff's exhibit 8 and the several photographs show the wardrobe case in open position with the garment supporting and retaining mechanism in its several positions. Reference numerals applied to said photographs indicate the various elements of the claims. Each of the relied upon claims will be applied to said illustrated structure in accordance with the requirement of Bill of Particulars Item IIIa as follows:

Shoemaker Patent Claim 1: A body portion of the luggage—1; a cover portion—2; the hinged

connection between the cover portion and the body portion—3; the garment supporting member and entire swinging and folding frame unit indicated generally by the numeral 4; the hinged connections between the garment supporting member and the hinged side of the cover are indicated at 5; the garment supporting means are the individual hanger bars 6 and as shown in the photographs the same are carried adjacent the hinged connections 5 of the supporting member.

Shoemaker Patent Claim 2: The elements as applied in connection with claim 1 cover the situation with respect to claim 2 and the garment supporting means is specified as being removable. In attached exhibits 8a and 8b the hanger rods 6 have hook-like end portions and are engaged on trolley rods 7. The hanger bars 6 are readily removable from the trolley rods 7 [41] in the structure of exhibits 8a and 8b when the trolley rods are released by catch mechanisms.

Shoemaker Patent Claim 4: The application of the elements of this claim to the Balkan structure is the same as above given except for the last element which specifies “a garment supporting means removably carried by the hinged side of said supporting member”. In the attached exhibits a garment supporting means 6 is removably mounted on the trolley rods 7 which trolley rods are rigidly carried by the inner end portions of the folding side arms 8 of the garment supporting member 4. The outer side arms 9 of the garment supporting

member 4 are hingedly connected to the hinged side of the cover 9 at 5 and with the garment supporting member arranged in the position shown in either exhibit 8a or 8b, the garment supporting means 6 are removably carried by the hinged side of the supporting member 4. The arms 9 of the supporting member 4 are furthermore connected by a transverse bar 10 and this supports and holds the arms 9 and is instrumental in the carrying of the garment supporting means by the hinged side of the supporting member 4.

Shoemaker Patent Claim 8: The Balkan structure as illustrated has a body portion 1, a cover portion 2, hingedly connected to the body portion as at 3, a garment supporting member 4 hingedly connected to the hinged side of the cover portion as at 5, and a garment supporting means 6. In the Balkan structure a garment is primarily folded on a hanger bar 6. This hanger bar is carried by the hinged side of the supporting member as brought out in connection with claim 4. The garment supporting member 4 has a folding edge 11 on its free side and the garment is secondarily folded on said free edge. [42]

Shoemaker Patent Claim 10: The complained of Balkan structure has a body portion 1, a cover portion 2 hingedly connected to the body portion as at 3. It has a garment supporting member 4 carried by the hinged side of the cover portion 2 through the medium of the hinged connections 5—5. Said supporting member 4 embodies a gar-

ment supporting means 6 on which a garment may be primarily folded and it furthermore has a folding edge 11 on which garments may be secondarily folded. When the supporting member is packed it is swung entirely into the cover of the case as in exhibit 8b and releasable straps 12 are provided for retaining the supporting member in packed position in the cover and this is also accomplished by a retaining curtain 13 which may be swung over the open side of the cover to enclose the garment supporting member and which is adapted to be secured at its lower edge within the hinged side of the cover. When the illustrated case is in normal carrying position the garments are supported in the cover in parallel relationship to the normal carrying position of the luggage.

Shoemaker Patent Claim 11: The Balkan garment supporting member 4 is hingedly connected to the hinged side of the cover 2 through the connections 5—5. The member 4 is adapted to be hinged to a horizontal position over the body portion 1 while being packed, as in exhibit 8a. The garment supporting means 6 are removably carried by the hinged side of the supporting member 4 and the folding edge 11 is on the free side of the supporting member 4 and garments are secondarily folded thereon as the member 4 is moved to packed position within the cover, as in exhibit 8b.

Shoemaker Patent Claim 12: The complained of structure has a body portion 1, a cover portion 2, hingedly connected to [43] the body portion as at

3. The garment supporting member is supported on the hinged side of the cover portion through the elements 5—5. The garment supporting member has a primary folding means 6 and a secondary folding means 11, both for supporting garments and they are on the supporting member 4 in parallel relationship to the normal carrying position of the luggage as will appear from exhibit 8b.

Shoemaker Patent Claim 13: The Balkan structure has a body portion 1, a cover portion 2, hingedly connected to the body portion as at 3. The garment supporting means 6 are carried adjacent the hinged connection of the cover portion as disclosed in the exhibits. The garment supporting member 4 is hingedly connected to the hinged side of the cover through the elements 5—5. The member 4 has a folding edge 11 on its free side which folding edge is adapted to register adjacent the free side of the cover when the member 4 is moved to packed position within the cover, as clearly shown in exhibit 8b.

Shoemaker Patent Claim 14: This claim again specifies the body portion 1, the hinged cover 2, and the supporting member 4. The supporting member 4 is hingedly connected to the hinged side of the cover through the elements 5—5. The bars 6 are means adjacent the hinged edge of the supporting member 4 on which garments may be primarily folded. The edge 11 is a folding edge on the free side of the supporting member 4 on which garments are secondarily folded.

Shoemaker Patent Claim 18: The Balkan structure has a garment supporting member 4 hingedly connected to the hinged side of the cover 2 and adapted to be hinged to a horizontal position over the body portion 1 to receive garments, as in exhibit 8a. The garment supporting means 6 are adapted to have [44] the garments primarily folded thereon and the same are removably carried on the trolleys 7—7 adjacent the hinged side of said supporting member, when the fixture is arranged as in exhibits 8a or 8b. The supporting member 4 has a folding edge 11 on its free side over which garments may be secondarily folded and the secondary fold takes place as the supporting member is moved to packed position in the cover member as in exhibit 8b. The means for retaining garments on the folding edge are the straps 12 and/or the curtain 13.

Shoemaker Patent Claim 19: The Balkan structure has a body portion 1, a cover portion 2, hingedly connected to the body portion, a garment supporting member 4 hingedly connected to the hinged side of the cover portion through the members 5—5. It also has a garment supporting means 6 and the garment supporting member has trolleys 7—7 and the adjoining connections and arm portions whereby the garment supporting means 6 are removably attached adjacent the hinged connection of the cover portion, when the mechanism is arranged as in exhibits 8a and 8b.

Shoemaker Patent Claim 22: The Balkan structure has a body portion 1, a hinged cover portion 2,

and garment supporting means 6 on which garments may be primarily folded. The means 6 are removably carried in the cover portion adjacent the hinged connection thereof when the fixture is folded into the cover in its normal carrying position, as in exhibit 8b. The Balkan structure also has a garment supporting member 4 which has the two parallel portions 10 and 11. The parallel portion 10 is hingedly connected to the cover portion adjacent the hinged side thereof through the inner ends of the arms 9 and the hinged connections 5. The other parallel portion 11 has a folding [45] edge on which garments may be secondarily folded.

Shoemaker Patent Claim 23: The Balkan structure has a body portion 1, a hinged cover portion 2 and a garment supporting member 4 hingedly mounted in the cover portion through the elements 5—5 and on the hinged side of the cover. The members 6 are garment supporting means. These garment supporting means are removably supported on the garment supporting member by the trolleys 7—7 and their cooperating latches. When the fixture is arranged as shown in the exhibits the garment supporting means are supported adjacent the hinged connection 5—5 of the member 4.

Shoemaker Patent Claim 24: In the Balkan exhibits the garment supporting member 4 is hingedly carried by the hinged side of the cover 2 through the elements 5—5. Trolley means 7 on the garment supporting member removably support a hanger 6

adjacent the hinged side of the cover when the apparatus is arranged as shown in the exhibits.

Shoemaker Patent Claim 25: The Balkan structure has a body portion 1, a hinged cover portion 2, a garment supporting member 4 hingedly carried in the luggage through the elements 5—5 and a hanger rod 6. This hanger rod is removably carried adjacent the hinged connection of the body portion and the cover portion by being mounted on the trolley rods 7—7 which are at the inner end of the member 4 when the fixture is arranged as in exhibits 8a and 8b.

Shoemaker Patent Claim 26: The Balkan structure has a cover 2 and a garment supporting member 4. One side of the member 4 is hingedly connected to one side of the cover and the other side of the garment supporting member is adapted to swing to a position adjacent the other side of the cover as in exhibit [46] 8a. A garment supporting means 6 is carried on the first mentioned side of the member 4.

Shoemaker Patent Claim 27: The analysis as to claim 26 applies to this claim and it is pointed out that in Balkan the garment supporting means 6 is, in the position shown in exhibit 8b, in the cover adjacent the first mentioned or hinged side of the garment supporting member 4.

Particular IIIb:

This is answered by Particular IIIa which is responsive to the relied upon claims of the Shoemaker patent and as each claims sets forth a com-

bination of elements which defines the new and patentable subject matter of the patent in suit it is believed that Particular IIIa also completely answers IIIb.

Particular IV:

In the Shoemaker patent in suit the "garment supporting member" is identified in the drawings as follows: Member 12 in Fig. 1; member 12 in Fig. 4; member 12 in Fig. 5; member 12 in Fig. 7; member 12a, 12b and 12c in Fig. 8; member 12 in Fig. 9; and member 12 in Fig. 11.

Particular V:

"The garment supporting means" is identified in the several figures of the drawings of the Shoemaker patent by the numeral 30 and in the modification shown in Fig. 11 the garment supporting means is the element 36.

Particular VI:

"The garment supporting member" is described in the following places in the specification of the patent in suit: Page 2, lines 14 to 19; page 2, lines 57 to 69.

Particular VII:

"The garment supporting means" are described in the [47] following places in the specification of the patent in suit: Page 2, line 66; page 2, lines 120 to 129; page 3, lines 30 to 39; page 3, lines 116 to 123.

Particular VIII:

On the attached exhibits 8a and 8b defendants' structure includes "a garment supporting member" identified generally by the numeral 4. This member includes the side arms 8—8 and 9—9, the inner bar 10, the outer bar 11 forming a folding edge and the means at the free ends of the arms 8 for removably supporting hanger rods.

Particular IX:

In the attached exhibits 8a and 8b defendants' "garment supporting means" are identified by the numeral 6.

Particular Xa to Xg:

Particulars Xa to Xg are filed herewith under seal as said particulars have to do with the dates of conception, reduction to practice, disclosures and drawings.

Dated: November 30th, 1939.

TOWNSEND & HACKLEY

ROY C. HACKLEY, JR.

MORSELL, LIEBER & MORSELL

[Printer's Note: Plaintiff's Exhibits 8a and 8b attached hereto are set out in the Book of Exhibits.]

[Endorsed]: Filed Nov. 30, 1939. [48]

[Title of District Court and Cause—No. 21271-R.]

PARTICULAR Xa TO Xg

Particular Xa:

Early in November 1928, at Kitchener, Ontario, Canada.

Particular Xb:

Early in November 1928, at Kitchener, Ontario, Canada, to employees and officials of The L. McBrine Company, Limited, and shortly thereafter to Harold Shipman of Ottawa, Canada. [51]

Particular Xc:

In November 1928, in the offices of Harold Shipman, Patent Attorney, of Ottawa, Canada, by his draftsman.

Particular Xd:

In November 1928, by Harold Shipman in Ottawa, Canada.

Particular Xe:

In the plant of The L. McBrine Company, Limited, Kitchener, Ontario, Canada, in November 1928.

Particular Xf:

By Emanuel J. Shoemaker at Kitchener, Ontario, Canada, in November, 1928.

Particular Xg:

First commercially introduced by The L. McBrine Company, Limited, at Kitchener, Ontario, Canada, in about December, 1928, which commercial introduction was in Canada, and the invention was

later introduced into the United States by Emanuel J. Shoemaker in February, 1929, and shortly thereafter, in the spring of 1929, the invention was manufactured and sold in the United States by Mendel-Drucker Co. of Cincinnati, Ohio, which company has exploited the invention since that date, as have other companies in the United States.

Dated: November 30th, 1939.

TOWNSEND & HACKLEY

ROY C. HACKLEY, JR.

MORSELL, LIEBER & MORSELL

[52]

[Title of District Court and Cause—No. 21273-R.]

PLAINTIFF'S BILL OF PARTICULARS

Particular I:

The claims which plaintiff will rely on are the following: 1, 2, 4, 8, 10, 11, 12, 13, 14, 18, 19, 22, 23, 24, 25, 26 and 27.

Particular II:

Upon information and belief plaintiff asserts that the business known as H. Koch & Sons is a co-partnership including Herman Koch, Harold M. Koch and William L. Koch. Herman Koch has [53] been represented as the principal in the business but upon information and belief plaintiff asserts that Harold M. Koch, William L. Koch and Rebecca Koch are also active in the business. The acts of infringement complained of by the plaintiff

are the manufacture and sale of wardrobe hand luggage in violation of the Shoemaker letters patent in suit. In view of the present information as to the activity of the said Harold M. Koch, William L. Koch and Rebecca Koch in the business, together with Herman Koch, plaintiff charges that the complained of acts of infringement are the joint and several acts of the specified defendants.

Particular III:

Each of the relied upon claims of the patent in suit is a complete statement of what plaintiff believes to be new and patentable. Therefore, the combinations defined by the claims specified in Particular I respectively define the alleged new and patentable structures.

Particular IV:

The acts of the defendants asserted to constitute infringement of the patent in suit are making and selling devices alleged to be under the relied upon claims of the patent in suit. In view of the association of the defendants Harold M. Koch, William L. Koch and Rebecca Koch with Herman Koch in the conduct of the business it is believed that the complained of infringements were the joint and several acts of the defendants.

Particular V:

The attached photographs exhibits, plaintiff's exhibits 7a and 7b, are reproductions of a wardrobe suitcase manufactured and sold by defendants prior to the filing of the Complaint herein. The ward-

robe case itself is in evidence as plaintiff's exhibit 7 and the several photographs show the wardrobe case in [54] open position with the garment supporting and retaining mechanism in its several positions. The said exhibits 7, 7a and 7b of course represent but one form of wardrobe case manufactured and sold by defendants. Upon securing answers to plaintiff's interrogatories and the furnishing of showings of the additional articles of manufacture by the defendants it may of course be contended that cases of defendants' manufacture, other than that embodied in exhibits 7, 7a and 7b are likewise within the relied upon claims of the patent in suit. Reference numerals applied to said photographs indicate the various elements of the claims. Each of the relied upon claims will be applied to said illustrated structure in accordance with the requirement of Bill of Particulars Item 5 as follows:

Shoemaker Patent Claim 1: A body portion of the luggage—1; a cover portion—2; the hinged connection between the cover portion and the body portion—3; the garment supporting member and entire swinging and folding frame unit indicated generally by the numeral 4; the hinged connections between the garment supporting member and the hinged side of the cover are indicated at 5; the garment supporting means are the individual hanger bars 6 and as shown in the photographs the same are carried adjacent the hinged connections 5 of the supporting member.

Shoemaker Patent Claim 2: The elements as applied in connection with claim 1 cover the situation with respect to claim 2 and the garment supporting means is specified as being removable. In attached exhibits 8a and 8b the hanger rods 6 have reduced end portions which are engaged in slotted brackets 7. The hanger bars 6 are readily removable from the brackets 7 in the structure of exhibits 7a and 7b when the fixture is in the position shown in exhibit 7a. [55]

Shoemaker Patent Claim 4: The application of the elements of this claim to the Koch structure is the same as above given except for the last element which specifies "a garment supporting means removably carried by the hinged side of said supporting member". In the attached exhibits a garment supporting means 6 is removably mounted in the brackets 7 which brackets are rigidly carried by the inner end portions of the folding side arms 8 of the garment supporting member 4. The outer side arms 9 of the garment supporting member 4 are hingedly connected to the hinged side of the cover 9 at 5 and with the garment supporting member arranged in the position shown in either exhibit 7a or 7b, the garment supporting means 6 are removably carried by the hinged side of the supporting member 4. The arms 8 of the supporting member 4 furthermore carry angled brackets 15 which engage over the arms 9 and support the arms 8 in folded relation adjacent the arms 9 whereby the

garment supporting means are carried by the hinged side of the supporting member 4.

Shoemaker Patent Claim 8: The Koch structure as illustrated has a body portion 1, a cover portion 2, hingedly connected to the body portion as at 3, a garment supporting member 4 hingedly connected to the hinged side of the cover portion as at 5, and a garment supporting means 6. In the Koch structure a garment is primarily folded on a hanger bar 6. This hanger bar is carried by the hinged side of the supporting member as brought out in connection with claim 4. The garment supporting member 4 has a folding edge 11 on its free side and the garment is secondarily folded on said free edge.

Shoemaker Patent Claim 10: The complained of Koch structure has a body portion 1, a cover portion 2 hingedly connected to the body portion as at 3. It has a garment supporting member 4 [56] carried by the hinged side of the cover portion 2 through the medium of the hinged connections 5—5. Said supporting member 4 embodies a garment supporting means 6 on which a garment may be primarily folded and it furthermore has a folding edge 11 on which garments may be secondarily folded. When the supporting member is packed it is swung entirely into the cover of the case as in exhibit 7b and releasable latches 12 are provided for retaining the supporting member in packed position in the cover and this is also accomplished by a retaining curtain 13 which may be swung over

the open side of the cover to enclose the garment supporting member and which is adapted to be secured at its lower edge within the hinged side of the cover. When the illustrated case is in normal carrying position the garments are supported in the cover in parallel relationship to the normal carrying position of the luggage.

Shoemaker Patent Claim 11: The Koch garment supporting member 4 is hingedly connected to the hinged side of the cover 2 through the connections 5—5. The member 4 is adapted to be hinged to a horizontal position over the body portion 1 while being packed, as in exhibit 7a. The garment supporting means 6 are removably carried by the hinged side of the supporting member 4 and the folding edge 11 is on the free side of the supporting member 4 and garments are secondarily folded thereon as the member 4 is moved to packed position within the cover, as in exhibit 7b.

Shoemaker Patent Claim 12: The complained of structure has a body portion 1, a cover portion 2, hingedly connected to the body portion as at 3. The garment supporting member is supported on the hinged side of the cover portion through the elements 5—5. The garment supporting member has a primary folding means 6 and a secondary folding means 11, both for supporting garments [57] and they are on the supporting member 4 in parallel relationship to the normal carrying position of the luggage as will appear from exhibit 7b.

Shoemaker Patent Claim 13: The Koch structure has a body portion 1, a cover portion 2, hingedly connected to the body portion as at 3. The garment supporting means 6 are carried adjacent the hinged connection of the cover portion as disclosed in the exhibits. The garment supporting member 4 is hingedly connected to the hinged side of the cover through the elements 5—5. The member 4 has a folding edge 11 on its free side which folding edge is adapted to register adjacent the free side of the cover when the member 4 is moved to packed position within the cover, as clearly shown in exhibit 7b.

Shoemaker Patent Claim 14: This claim again specifies the body portion 1, the hinged cover 2, and the supporting member 4. The supporting member 4 is hingedly connected to the hinged side of the cover through the elements 5—5. The bars 6 are means adjacent the hinged edge of the supporting member 4 on which garments may be primarily folded. The edge 11 is a folding edge on the free side of the supporting member 4 on which garments are secondarily folded.

Shoemaker Patent Claim 18: The Koch structure has a garment supporting member 4 hingedly connected to the hinged side of the cover 2 and adapted to be hinged to a horizontal position over the body portion 1 to receive garments, as in exhibit 7a. The garment supporting means 6 are adapted to have the garments primarily folded thereon and the same are removably carried in the brackets 7—7 adjacent the hinged side of said supporting

member, when the fixture is arranged as in exhibits 7a or 7b. The supporting member 4 has a folding edge 11 on its free side [58] over which garments may be secondarily folded and the secondary fold takes place as the supporting member is moved to packed position in the cover member as in exhibit 7b. The means for retaining garments on the folding edge are the latches 12 and/or the curtain 13.

Shoemaker Patent Claim 19: The Koch structure has a body portion 1, a cover portion 2, hingedly connected to the body portion, a garment supporting member 4 hingedly connected to the hinged side of the cover portion through the members 5—5. It also has a garment supporting means 6 and the garment supporting member has slotted brackets 7—7 and the adjoining connections and arm portions whereby the garment supporting means 6 are removably attached adjacent the hinged connection of the cover portion, when the mechanism is arranged as in exhibits 7a and 7b.

Shoemaker Patent Claim 22: The Koch structure has a body portion 1, a hinged cover portion 2, and garment supporting means 6 on which garments may be primarily folded. The means 6 are removably carried in the cover portion adjacent the hinged connection thereof when the fixture is folded into the cover in its normal carrying position, as in exhibit 7b. The Koch structure also has a garment supporting member 4 which has the two parallel portions 10 and 11. The parallel portion 10 is hingedly connected to the cover portion adjacent the

hinged side thereof through the inner ends of the arms 9 and the hinged connections 5. The other parallel portion 11 has a folding edge on which garments may be secondarily folded.

Shoemaker Patent Claim 23: The Koch structure has a body portion 1, a hinged cover portion 2 and a garment supporting member 4 hingedly mounted in the cover portion through the elements 5—5 and on the hinged side of the cover. The members 6 are [59] garment supporting means. These garment supporting means are removably supported on the garment supporting member by the brackets 7—7. When the fixture is arranged as shown in the exhibits the garment supporting means are supported adjacent the hinged connection 5—5 of the member 4.

Shoemaker Patent Claim 24: In the Koch exhibits the garment supporting member 4 is hingedly carried by the hinged side of the cover 2 through the elements 5—5. Slotted brackets 7 on the garment supporting member removably support a hanger 6 adjacent the hinged side of the cover when the apparatus is arranged as shown in the exhibits.

Shoemaker Patent Claim 25: The Koch structure has a body portion 1, a hinged cover portion 2, a garment supporting member 4 hingedly carried in the luggage through the elements 5—5 and a hanger rod 6. This hanger rod is removably carried adjacent the hinged connection of the body portion and the cover portion by being mounted in the slotted brackets 7—7 which are at the inner end

of the member 4 when the fixture is arranged as in exhibits 7a and 7b.

Shoemaker Patent Claim 26: The Koch structure has a cover 2 and a garment supporting member 4. One side of the member 4 is hingedly connected to one side of the cover and the other side of the garment supporting member is adapted to swing to a position adjacent the other side of the cover as in exhibit 7a. A garment supporting means 6 is carried on the first mentioned side of the member 4.

Shoemaker Patent Claim 27: The analysis as to claim 26 applies to this claim and it is pointed out that in Koch the garment supporting means 6 is, in the position shown in exhibit 7b, [60] in the cover adjacent the first mentioned or hinged side of the garment supporting member 4.

Particular VII:

Notice of the alleged infringement of the patent in suit was given to H. Koch & Sons, Inc. by registered letter sent to them on April 27, 1939, for which a return receipt was received. Correspondence was thereafter had with relation to the notice and the matter of the infringement with Messrs. Stern and Grupp of San Francisco, California, then representing H. Koch & Sons. For a number of years prior to the filing of the Complaint herein wardrobe cases manufactured and sold in the United States by one of plaintiff's licensees bore marking tags which contained the number of the Shoemaker patent in suit.

Particular IX:

The non-exclusive licenses mentioned in paragraph VIII of plaintiff's Complaint were licenses under the United States letters patent in suit here. Approximately 100,000 or more articles of wardrobe hand luggage have been manufactured and sold in the United States under the licenses granted under the patent in suit. Information is not available as to whether all of such articles were marked with the notice of the United States patent in suit here but one of the United States licensees, which alone has manufactured and sold in excess of 70,000 of the items in question in the United States has applied tags to its licensed items of hand luggage, which tags bore the number of the patent here in suit since shortly after the procurement of the license in early 1935.

Dated: December 11th, 1939.

TOWNSEND & HACKLEY,
CHAS. E. TOWNSEND,
ROY C. HACKLEY, JR.,
Of Counsel for Plaintiff. [61]

Receipt of within copy of plaintiff's bill of particulars is acknowledged this 11th day of December, 1939.

GEORGE B. WHITE,
Attorney for Defendants.

[Printer's Note: Plaintiff's Exhibits 8a and 8b attached hereto are set out in the Book of Exhibits.]

[Endorsed]: Filed Dec. 11, 1939. [62]

[Title of District Court and Cause—No. 21,273-R.]

INTERROGATORIES

Now comes the above named plaintiff, through its attorney, and propounds the following interrogatories under the provisions of Rule 33 of the Rules of Civil Procedure, said [65] interrogatories to be answered by Herman Koch, or the defendant having special knowledge of any of the facts and information elicited.

1. Is the concern known as "H. Koch and Sons" a co-partnership?

2. If the answer to interrogatory No. 1 is in the affirmative, name the various co-partners.

3. If the answer to interrogatory No. 1 is in the negative, state the exact character and personnel of the concern known as "H. Koch and Sons."

4. If, according to the answers to interrogatories 2 and 3, Herman Koch, Harold M. Koch, William L. Koch, and Rebecca Koch, or any of them, are connected with and interested in the conduct of the business known as "H. Koch and Sons", state fully the duties and interest of each, specifying which of these individuals, if any, are in charge of manufacturing operations, and which, if any, are in charge of the sales of luggage.

5. Did the defendants, or any of them, receive by registered mail a letter on the letter-head of Morsell, Lieber & Morsell of Milwaukee, Wisconsin calling attention to the U. S. patent to Shoemaker No. 1,878,989 owned by the plaintiff herein, and charg-

ing H. Koch and Sons with infringement of the same?

6. In any hand luggage manufactured and sold by H. Koch and Sons within six years prior to the filing of the bill of complaint herein, was there incorporated within the luggage case or cases certain garment folding and compacting fixtures and generally characterized by a swingable unit pivotally mounted within the cover section of the case and having associated therewith, adjacent the hingedly connected end of the cover, one or more removable bars or hangers, the latter [66] being for the primary folding of garments, which are secondarily folded over the outer end of the swinging unit?

7. If the answer to interrogatory No. 6 is in the affirmative, give the names, style numbers, or other descriptive or identifying designations of such items.

8. If the answer to interrogatory No. 6 is in the affirmative, give the name or names of the company or companies from whom you secured the garment folding and compacting fixtures.

9. If the answer to interrogatory No. 6 is in the affirmative, please state whether or not any of the defendants, or their workmen or employees assembled or mounted the fixtures within hand luggage cases.

10. If the answer to interrogatory No. 9 is in the affirmative, please state whether the hand luggage cases with the fixtures mounted therein were, prior to the filing of the bill of complaint herein,

and within six years prior thereto, offered for sale or sold by any of the defendants or their agents or employees.

11. If the answer to interrogatory No. 6 is in the negative, state whether or not, within six years prior to the filing of the bill of complaint herein, the defendants, or any of them, have manufactured, or assembled and sold, any forms of hand luggage having special equipment therein for folding and retaining garments, and if so, describe or furnish drawings, cuts or photographs of the interiors of such forms of wardrobe hand luggage.

12. Name the persons having a financial interest in the business known as "H. Koch and Sons". [67]

Remarks

The above interrogatories are propounded under the authority of Rule 33 of the Federal Rules of Civil Procedure. Prior to the filing of these interrogatories the defendants moved for a Bill of Particulars. If plaintiff is called upon to furnish the particulars, certain of the same can not be answered unless plaintiff is first furnished with the information elicited by certain of its interrogatories. For instance the answer to Particulars 1 and 5 are dependent upon information plaintiff may secure through interrogatories Nos. 6 to 11 inclusive. Particulars Nos. 2, 4 and 6 can only be answered accurately if plaintiff's interrogatories 1, 2, 3, 4 and 12 are first answered by the defendants. Likewise

plaintiff's interrogatory No. 5 relates to defendant's particular No. 7.

Generally stated, the above interrogatories seek information within the special knowledge of the defendants, or any of them, which information is needed for a simplification of the issues, and will also save the time of the Court and the parties in the establishment of plaintiff's prima facie case.

The Rules of Civil Procedure (26-37) were formulated to grant the widest latitude in ascertaining before trial facts concerning the real issues in dispute, and to permit interrogatories to parties in connection with any relevant matter with a view to simplifying the issues. (Nichols et al v. Sanborn Co., 24 F. S. 908.)

Dated: October 9, 1939.

MORSELL, LIEBER
& MORSELL,
CURTIS B. MORSELL,
Attorneys for Plaintiff.
TOWNSEND & HACKLEY,
ROY C. HACKLEY, JR.,
Of Counsel for Plaintiff. [68]

Service of the foregoing interrogatories acknowledged this 9th day of October, 1939.

GEORGE B. WHITE,
Attorney for Defendants.

[Endorsed]: Filed Oct. 10, 1939. [69]

[Title of District Court and Cause—No. 21273-R.]

DEFENDANTS ANSWERS TO PLAINTIFF
INTERROGATORIES

Now come the defendants above named and answer plaintiff, as follows:

Interrogatory No. 1. The answer is "No".

Interrogatory No. 2. See answer to Interrogatory No. 1.

Interrogatory No. 3. The concern known as "H. Koch & Sons" consists of defendant, Herman Koch an individual, doing business under said name.

Interrogatory No. 4. See answers to Interrogatories 2 and 3. The remaining defendants are employees in said business, to wit: Harold M. Koch and William L. Koch work in manufacturing luggage, and Rebecca Koch works as bookkeeper and stenographer.

Interrogatory No. 5. Defendant Herman Koch received a registered letter calling attention to the Shoemaker patent in suit, but none [70] of the other defendants received any letter regarding said patent.

Interrogatory No. 6. The answer is "No".

Interrogatory No. 7. See answer to Interrogatory No. 6.

Interrogatory No. 8. See answer to Interrogatory No. 6.

Interrogatory No. 9. See answer to Interrogatory No. 6.

Interrogatory No. 10. See answer to Interrogatory No. 6.

Interrogatory No. 11. In answer to this interrogatory and also in compliance with the stipulation in this cause with respect to plaintiff's motion for discovery and production of documents, annexed hereto are photo copies of photographs, marked Exhibit "A", which are representative of Wardrobe hand luggage having means in the cover for holding garments manufactured and sold by H. Koch & Sons, within six years prior to the filing of the Bill herein.

Interrogatory No. 12. See answer to interrogatory No. 3.

HERMAN KOCH,
Defendant.

State of California,
City and County of San Francisco—ss.

Herman Koch, being first duly sworn, deposes and says: I am one of the defendants in the above named cause, and I subscribe my name to the foregoing answers to interrogatories and know the contents thereof, that the same are true of my own knowledge.

HERMAN KOCH.

Subscribed and sworn to before me this 30th day of November, 1939.

(Seal) KATHRYN E. STONE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires March 1, 1941.

Receipt of a copy of the within answers to plaintiff's interrogatories on this 30th day of November, 1939, is hereby acknowledged.

TOWNSEND & HACKLEY,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 30, 1939. [71]

MATCHED AIRPLANE SETS WITH EVERY WANTED FEATURE!

29-INCH FORTNIGHTER19.95

Carries up to 12 dresses or 3 men's suits.
Felt-backed dust curtain—for protection.
Removable bottom, partitions—use 2 ways.
Use letter A for mail order

21-inch Overnight Case to match, 8.95
Use letter B for mail order

You'll want this completely matched set at only

21-INCH WARDROBE CASE:

- ★ Lid contains 4 hangers for 6 to 10 dresses up to 60 inches long—keeps them wrinkle-free.
 - ★ Hanger fixture removable—dresses can be hung in closet without removing from hangers.
 - ★ Entire body space available for lingerie, hats, shoes, etc. (Case priced separately at \$12.95)
- Use letter C for mail order

18-INCH OVERNIGHT CASE:

- ★ Has 3 bottom pockets and 1 large lid pocket of closeness. Piano wire and lexon reinforcement.
 - ★ Designed to carry the personal travel accessories needed for overnight use.
 - ★ Matches wardrobe case in design and quality of workmanship. (Priced separately, \$7.95.)
- Use letter D for mail order

19⁹⁵.

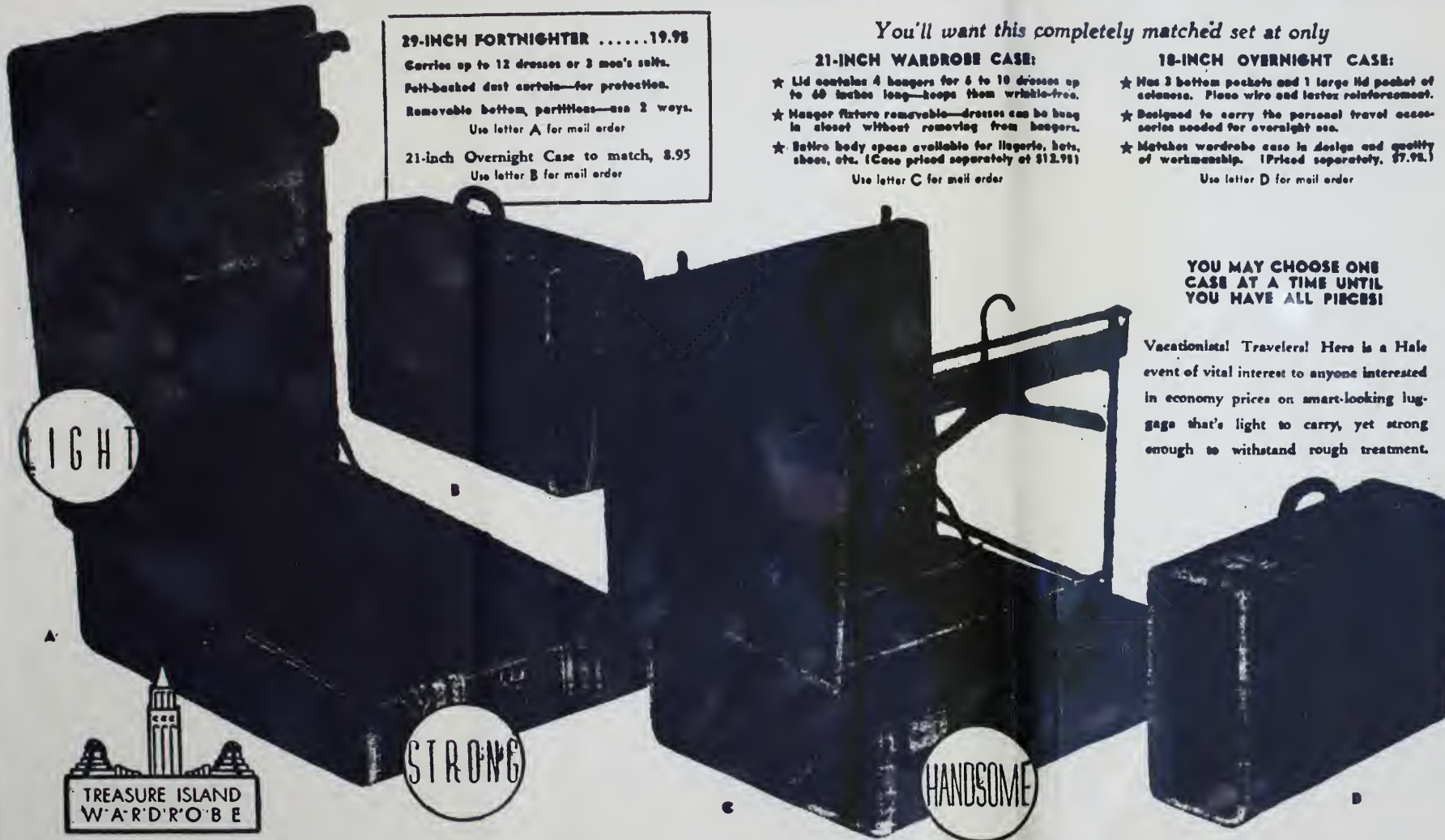
SET of 21-inch wardrobe and 18-inch overnight cases

YOU MAY CHOOSE ONE CASE AT A TIME UNTIL YOU HAVE ALL PIECES!

Vacationists! Travelers! Here is a Hale event of vital interest to anyone interested in economy prices on smart-looking luggage that's light to carry, yet strong enough to withstand rough treatment.

Every Piece Has These Quality Features:

- ★ Tuf-Raw rawhide bindings—extra heavy, double stitched.
- ★ 3-ply wood veneer cases—dovetailed construction.
- ★ Canvas covers—pyroxilin coated, weather resistant, washable.
- ★ Best quality inset locks—non-tarnishable.
- ★ Unbreakable crystal handles—a new transparent plastic material.
- ★ Solid, riveted handleposts—for extra security.
- ★ Celanese lined—with piano wire reinforced, bloused pockets.
- ★ Non-tarnishable studs on bottom and sides—for extra protection.
- ★ Rounded, streamlined edges—with reinforced, moulded construction.
- ★ Double stitched, rawhide hinges.
- ★ Colors and patterns—tan stripes; also brown or gray "tweed."



TREASURE ISLAND
WARDROBE

[Title of District Court and Cause—No. 21,273-R.]
DEMAND FOR ADMISSION OF FACTS AND
OF GENUINENESS OF DOCUMENTS OF
RULE 36 OF THE RULES OF CIVIL PRO-
CEDURE.

In behalf of the plaintiff in the above entitled cause, we hereby ask that defendants herein admit in writing the execution and genuineness of the following letters, copies of which are [73] hereunto annexed, enumerated as follows:

Letter of May 2, 1939 on letterhead of Stern & Grupp addressed to Morsell, Lieber & Morsell;

Letter of May 10, 1939 on letterhead of Stern & Grupp addressed to Morsell, Lieber & Morsell;

Letter of June 27, 1939 on letterhead of Stern & Grupp addressed to Morsell, Lieber & Morsell.

We also call upon you to admit in writing the receipt by H. Koch & Sons, Inc., and by Stern & Grupp (attorneys representing H. Koch & Sons, Inc.) the following identified letters, copies of which are attached hereto:

Registered letter from Morsell, Lieber & Morsell of April 27, 1939 addressed to H. Koch & Sons, Inc. of San Francisco, California;

Letter of May 4, 1939 from Morsell, Lieber & Morsell to Stern & Grupp of San Francisco, California;

Letter of May 15, 1939 from Morsell, Lieber & Morsell to Stern & Grupp; and

Letter of June 15, 1939 from Morsell, Lieber & Morsell to Stern & Grupp.

We ask you to admit in writing that the letters enumerated in the last group were in fact received by the parties to whom they were addressed shortly after the dates appearing on said letters.

Dated: January 16, 1940.

MORSELL, LIEBER &
MORSELL,
CURTIS B. MORSELL,
Attorneys for Plaintiff.
TOWNSEND & HACKLEY,
Counsel for Plaintiff.

Service of the foregoing demand for admission of facts and of genuiness of documents acknowledged this 22nd day of January, 1940.

GEORGE B. WHITE,
Attorney for Defendnts. [74]

Stern & Grupp
Mills Building
San Francisco

May 2, 1939

Morsell, Lieber & Morsell
633 Empire Building
Milwaukee, Wisconsin

Gentlemen:

Your letter of April 27 addressed to H. Koch & Sons has been placed with us for our attention.

We are ordering from the Patent Office copies of your client's patent and as soon as we have had the

same investigated by our patent attorneys we will advise you in the premises.

It might expedite matters if you would air mail to us a copy of the patent you claim H. Koch & Sons are infringing.

Very truly yours,
STERN & GRUPP
By (Sgd. MORRIS M. GRUPP)

MMG:LC [75]

Stern & Grupp
Mills Building
San Francisco

May 10, 1939

Morsell, Lieber & Morsell
Empire Building
Milwaukee, Wisconsin

Re: H. Koch & Sons

Gentlemen:

Thanks for your letter of May 4th with the enclosed copy of patent, which we will retain for a few days more and then return same to you, as per your request.

Inasmuch as our client manufactures a great variety of luggage, it would expedite our analysis and answer if you would be kind enough to advise us at this time the particular luggage which is the subject of your complaint. You must by this time have either a sample or some photograph of the particular item you complain of. Off hand, we are

unable to find any luggage made by our clients that would answer the description given in your letter.

Very truly yours,

STERN & GRUPP

By (Sgd. MORRIS M. GRUPP)

MMG-LC [76]

Stern & Grupp

Mills Building

San Francisco

June 27, 1939

Morsell, Lieber & Morsell

633-638 Empire Building

Milwaukee, Wisconsin

Re: H. Koch & Sons

Gentlemen:

This is in answer to your letters of May 15 and June 15. The reason for the delay in answering your letters is because we have submitted this matter to our patent attorneys for their opinion.

After a careful investigation and analysis of the Shoemaker patent No. 1878989, our patent attorneys report to us the following is their opinion:

(a) Our client does not manufacture any luggage in which a garment supporting member is in any way connected to the "hinged side" of the cover portion of the luggage. Your reference to this in the letter of May 15 is either erroneous, or the luggage you have at

hand is not a product of H. Koch & Sons manufacture.

(b) The garment support in our client's luggage is not "H" shaped.

(c) The garment supporting means in our client's luggage is not mounted on the "hingedly connected portion" of the supporting frame or member, but, to the contrary, is on the free end of the garment supporting frame.

(d) Nor has our client's luggage any of the specific structural combinations defined in the various claims of the Shoemaker patent with reference to the modifications of said patent.

Therefore we have given careful consideration to your complaint. In view of the fact that we arrive at the conclusion that none of the luggage manufactured by H. Koch & Sons incorporates any structure that would be within the scope of any claims of the Shoemaker patent, we must advise our clients to disclaim any liability in the matter.

Very truly yours,

STERN & GRUPP

By (Sgd. MORRIS M. GRUPP)

MMG:LC [77]

April 27, 1939

Via Registered Mail.
H. Koch & Sons, Inc.
San Francisco, Calif.

Gentlemen:

Our attention has been directed to the fact that you are manufacturing and selling certain swing fixture equipped wardrobe cases and luggage. Our client, The L. McBrine Co., Ltd., of Kitchener, Ont., Canada, is the owner of U. S. Patent No. 1,878,989, issued Sept. 20, 1932, in the name of E. J. Shoemaker, for Hand Luggage.

We have actually compared cases manufactured by your company with the claims of said Shoemaker patent and find that your wardrobe cases directly infringe a great number of the claims of said patent.

On behalf of our client, therefore, we call upon you to immediately desist from further infringement of said Shoemaker patent and to make suitable accounting for the past infringement. In the alternative you may arrange with us for a license under this patent. May we receive an expression as to your intentions in the matter within two weeks from the above date?

Very truly yours,
MORSELL, LIEBER
& MORSELL,
By C. B. MORSELL.

CBM:AH [78]

May 4, 1939

Stern & Grupp
Attorneys at Law
Mills Building
San Francisco, Cal.

Gentlemen:

In re: H. Koch & Sons

Thank you for your letter of May 2, 1939 advising that you have been retained to represent H. Koch & Sons in the matter of the patent infringement referred to in our letter of April 27, 1939.

We have tried to secure a number of copies of the Shoemaker patent No. 1,878,989 from the Patent Office, but find that the same are now out of print. We are enclosing, pursuant to your request, our file copy of this patent, but as we do not have any extra copies available, we must ask that you have this patent copy photostated and then return the original to us.

We may state that this patent contains twenty-eight claims, and the majority of the same are, in our opinion, infringed by the complained of structure of your client. In our estimation this patent covers rather broadly the idea of a luggage case wherein a swinging frame is pivotally mounted within the inner end of the cover section of the case and has associated therewith, adjacent the hingedly connected end of the cover, a removable bar or hanger for the primary folding of garments, with the garments being secondarily folded over the outer

end of the swinging frame, the arrangement being such as to compactly hold the clothes in one section of the case.

We will be pleased to receive a statement of your client's position in the matter at an early date.

Very truly yours,
MORSELL, LIEBER
& MORSELL

By C. B. MORSELL.

CBM:RE

Encl.

Air Mail [79]

May 15, 1939

Stern & Grupp
Mills Building
San Francisco, Cal.

Gentlemen:

Re: H. Koch & Sons

Receipt is acknowledged of your favor of May 10, 1939 wherein you advise that the copy of the Shoemaker patent which we furnished to you a few days ago will be returned to us shortly.

As to your statement regarding the particular items in your client's line which form the basis of our complaint, I can only advise that we have before us a case of your client's manufacture which bears a metal tag reading "Koch's Aviation Luggage". The particular case in question is a piece

of wardrobe hand luggage for ladies' garments and includes a U-shaped frame whose arms are pivotally connected, at their inner ends, to the hinged end of the cover. The outer ends of the arms of this U-frame have pivotally attached thereto a supplemental frame member which can be unfolded so that the supplemental frame member assumes a vertical position, and at the outer ends of the arms of the supplemental frame members there is a bracket which removably holds a plurality of garment bars. When this frame is collapsed, the bracket holding the removable garment bars occupies a position within the hinged end of the cover, and garments are folded about the outer end of the primary frame member. In our estimation, this responds exactly to a number of the claims in the Shoemaker patent. It is also very possible that other items in your client's line are equally responsive to the claims of the Shoemaker patent. If you desire to submit to us a catalog or cuts of the various items in your client's line, we will be glad to indicate the various pieces of luggage which we feel conflict with the Shoemaker patent.

Very truly yours,
MORSELL, LIEBER
& MORSELL

By C. B. MORSELL

CBM:RE [80]

June 15, 1939

Stern & Grupp
Mills Building
San Francisco, Cal.

Gentlemen:

Re: H. Koch & Sons

On April 27th, 1939 we gave formal notice to your client, H. Koch & Sons, Inc. on the behalf of L. McBrine Company, Ltd., of Kitchener, Ontario, Canada re infringement of the Shoemaker patent No. 1,878,989. Your response of May 10th, 1939 requested more information, and we complied under date of May 15th, 1939. To further advise you in the matter, we are glad to enclose herewith a printed copy of the Shoemaker patent in question, and we suggest that you compare your client's complained of luggage with the claims of this patent.

Frankly, our client is not willing to have this matter further delayed, and we are instructed to institute formal suit against H. Koch & Sons unless we get a satisfactory reply from you very shortly.

Very truly yours,
MORSELL, LIEBER
& MORSELL

By C. B. MORSELL

CBM:MH

Encl.

[Endorsed]: Filed Jan. 22, 1940. [81]

[Title of District Court and Cause—No. 21,273-R.]

ADMISSION OF GENUINENESS OF
DOCUMENTS

The defendants admit the execution and genuineness of the letters, copies of which are annexed to plaintiff's demand dated January 16, 1940 under Rule 36 of the Rules of Civil Procedure without prejudice as to objections to the same on other grounds.

GEORGE B. WHITE,
Attorney for Defendants.

[Endorsed]: Filed Mar. 7, 1940. [82]

[Title of District Court and Cause—No. 21,273-R.]

STIPULATION

It is hereby stipulated by and between the parties hereto, acting through their respective counsel, that:

1. Defendants shall furnish to plaintiff, on or before October 21, 1939, pursuant to plaintiff's request therefor filed October 9, 1939, such catalogs, drawings or photographs as will fully and fairly illustrate and describe wardrobe hand [83] luggage having means in the cover for holding garments, manufactured by defendants or any of them within six (6) years prior to the filing of the complaint herein.

2. Defendants' Motion for Bill of Particulars, filed herein on September 20, 1939, may be granted as to items 1, 2, 3, 5, 7 and 9 thereof, and as to item 4 provided the words "stating the approximate date

and place of each such act'' are stricken from item 4. Defendants' said Motion for Bill of Particulars is denied as to item 6, and as to alternate items 8 and 10 in the event particulars 7 and 9 are furnished. Plaintiff shall furnish its said Bill of Particulars within ten (10) days after service upon counsel for plaintiff of defendants' response under paragraph (1) above, and within ten days after service upon plaintiff of answers to plaintiff's interrogatories filed herein on October 9, 1939; whichever date be the earlier.

3. Defendants shall have ten (10) days after service upon them of plaintiff's Bill of Particulars, filed pursuant to paragraph (2) above, within which to file their Answer to the Complaint herein.

Dated: October 14, 1939.

TOWNSEND & HACKLEY

CHAS. E. TOWNSEND

ROY C. HACKLEY

Of Counsel for Plaintiff.

GEO. B. WHITE

Attorney for Defendants.

So ordered:

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed Mar. 7, 1940. [84]

[Title of District Court and Cause—No. 21,273-R.]

STIPULATION

It is stipulated by and between the parties to the above entitled cause, through their respective coun-

sel, that uncertified, officially printed copies of the specifications and drawings of United States Letters Patent and photographic copies of foreign [85] patents as prepared by the United States Patent Office may be offered in evidence in the above entitled cause with the full force and effect of the original patents, or certified copies thereof, and subject only to such objections as would be applicable to the originals or duly certified copies thereof, any such uncertified copies to be subject to correction if errors appear upon comparison with the original or a certified copy thereof. It is further stipulated as to each uncertified copy received in evidence, that the filing date, date of issue and ownership of the original are prima facie as indicated on the face of such copy.

It is further stipulated by counsel for defendants that H. Koch & Sons manufactured and sold the luggage case constituting plaintiff's exhibit 7, and others similar thereto, and also exemplified by plaintiff's exhibits 7a and 7b, within six years prior to the filing of the Bill of Complaint herein.

Dated this 5 day of March, 1940.

MORSELL, LIEBER
& MORSELL,
CURTIS B. MORSELL
633 Empire Bldg.
Milwaukee, Wis.

Attorneys for Plaintiff.

GEORGE B. WHITE

Attorney for Defendants.

[Endorsed]: Filed Mar. 7, 1940. [86]

[Title of District Court and Cause—No. 21,273-R.]

PLAINTIFF'S FURTHER
INTERROGATORIES

Now comes plaintiff above named, pursuant to leave [87] granted by order of court as of the date hereof, and demands that defendants, under oath, by those of defendants having the best knowledge thereof, furnish the following information pursuant to the provisions of Rule 33 of the Rules of Practice in this court:

(1) State in writing when Maurice P. Koch first invented or had knowledge of the subject matter covered by the Shoemaker patent in suit No. 1,878,989 as alleged in paragraph 14 of Defendants' answer.

(2) Produce and furnish plaintiff with copies of any sketches, drawings, or photographs of the luggage case or fixture allegedly invented and known by said Maurice P. Koch as alleged in paragraph 14 of Defendants' answer, or in lieu thereof permit plaintiff to photograph, photostat, or copy such showing or material.

(3) State when, where, and for how long a period the alleged development of said Maurice P. Koch was used, and the extent of such usage.

(4) Produce and permit plaintiff to prepare copies of any documentary evidence relating to the alleged development by said Maurice P. Koch including the building of any models, and sales of any such device.

(5) State in writing the names and addresses of the parties to whom the devices allegedly developed by the said Maurice P. Koch, as alleged in paragraph 14 of the answer, were sold, and the dates of each transaction, and furnish plaintiff with copies of the invoices, orders or other [88] documents showing the transactions.

MORSELL, LIEBER
& MORSELL,
Attorneys for Plaintiff.

TOWNSEND & HACKLEY,
CHAS. E. TOWNSEND,
ROY C. HACKLEY, JR.,
Of Counsel for Plaintiff.

Dated: January 29th, 1940.

Service of a copy of the foregoing Plaintiff's Further Interrogatories acknowledged this 29th day of January, 1940.

GEORGE B. WHITE,
Attorney for Defendants.

[Endorsed]: Filed Jan. 29, 1940. [89]

[Title of District Court and Cause—No. 21,273-R.]
DEFENDANTS' ANSWERS TO PLAINTIFF'S
FURTHER INTERROGATORIES

Now come the defendants by their attorney and answer plaintiff's further interrogatories, as follows:

1. Maurice P. Koch first invented and had knowledge of the subject matter shown on the attached photograph, marked Exhibit B, on or about the end of January, 1928.

2. Attached hereto and marked Exhibit B is a photograph of the luggage case or fixture invented and known by said Maurice P. Koch, as alleged in paragraph 14 of Defendants' answer herein.

3. The type of luggage case or fixture shown in Exhibit B was used from about May, 1928, for about 3 years, and over 5000 of the same were manufactured and sold.

4. Copies of documentary evidence at present [90] at hand are attached hereto and marked Exhibits C, D and E.

5. The devices shown in the photograph, Exhibit B, herein were sold throughout 1928 to about 1931 to the customers of H. Koch & Sons, but defendants at present have no list of names and dates of sales or invoices or orders at hand because of the loss of records and of the discontinuance of defendants' business in about 1935.

GEORGE B. WHITE,

Attorney for Defendants.

State of California,
City and County of San Francisco—ss.

George B. White, being first duly sworn, deposes and says: That he is the attorney for the defendants in the above named cause; that the facts in the foregoing answer to interrogatories are within

the personal knowledge of affiant; that he has read the foregoing answers to interrogatories and knows the contents thereof and the same is true of his own knowledge; that defendant Herman Koch who has the best knowledge of said information is ill and for that reason affiant makes this verification on said defendant's behalf.

GEORGE B. WHITE.

Subscribed and sworn to before me this 5 day of March, 1940.

KATHRYN E. STONE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires March 1, 1941.

Receipt of copies of the herein answers to plaintiff's further interrogatories on this 6th day of March, 1940, are hereby acknowledged.

TOWNSEND & HACKLEY,
CHAS. E. TOWNSEND,
ROY C. HACKLEY, JR. [91]

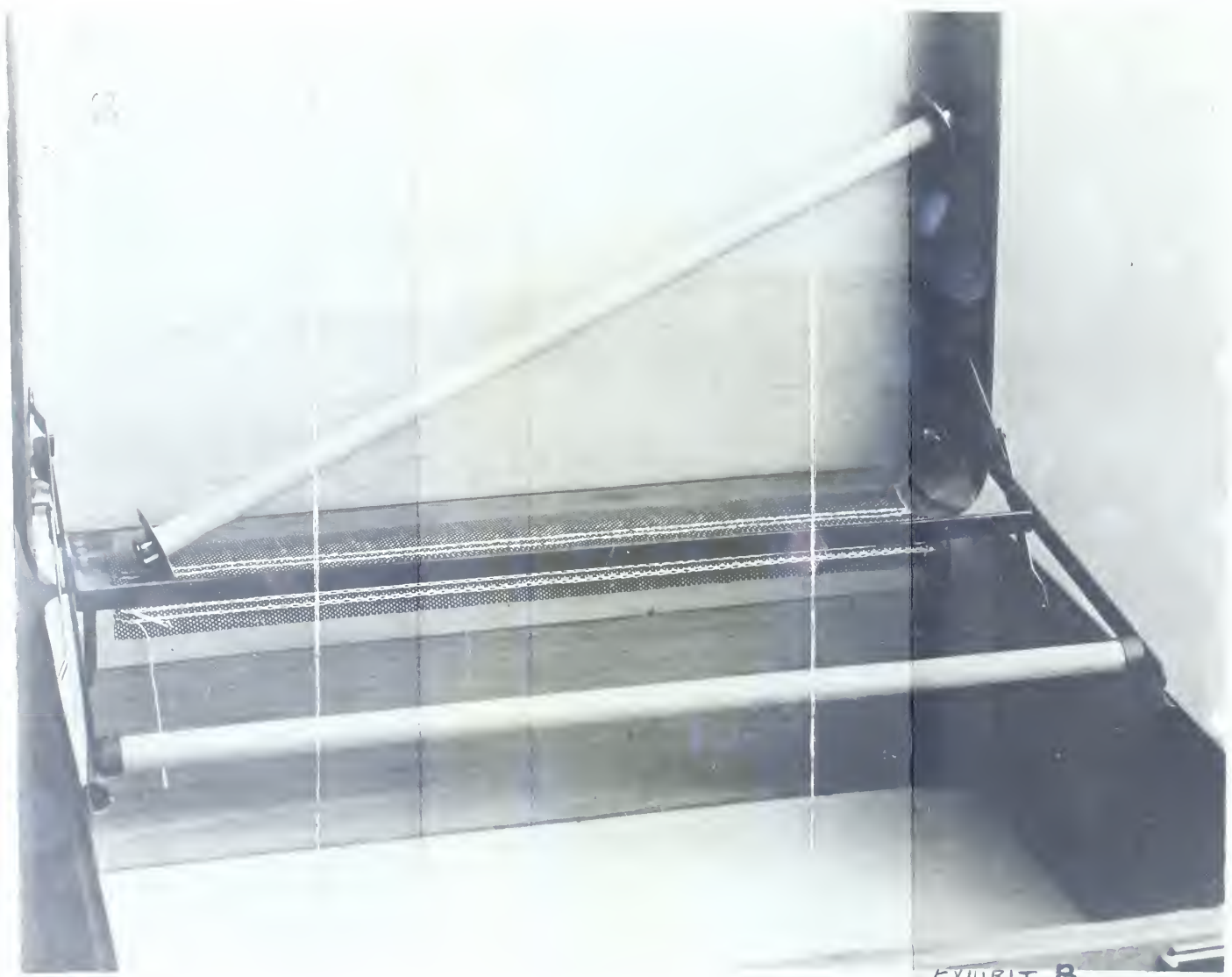


EXHIBIT B

PRODUCTION LIST

ORDER NO. 5-17-13

Koch
 2000 sets Seat Case Trolleys *Truce*

PART NAME	MATERIAL			OPERATION	CHECKED BY		REMARKS
	BLANK	GA.	KIND				
1 Rail	5/16 x 3/4		Steel Mat	18 3/8 in.	14 3/8 in.		see G. now
15	1		Cut off				Push
29			form				get 2 lengths
2 Bracket .0451			Mat form				see G. 526 1293
13			Piece				see die 372
19			Piece				see die
20			Bend in center				
30			Rattle				
Roll Bracket	1/8 in		Mat	2 1/2			see G.
16			Cut off - Blank				
23			Piece				see die
29			Subson form				
30			Rattle				
Cup	1 1/8	.020	Steel Mat	Use Discs in			see G. for dies
			form draw	Base metal			14 00 2353
			<i>Truce</i>				
			<i>Piece</i>				
			Bracket & Rail	Spot weld			
			Rivet				Disc in Seat B4 Holes 85 F86
			Seat Rail	to Bracket			

EXHIBIT D

Sheet No..... Account No.....
 Terms Name H. KOCH & SONS
 Rating Address 416 Natoma St., City
 Credit Limit

Date	Items	Folio	Debits	Credits	Balance
1928					
May 23	Re 5-19.....412S	85	2.00		2.00
“ 17	Dep. on #5-17-A.....	279		855.00	853.00*
June 12	Re: 5-17-A..... 496	S88	310.00		543.00*
“ 30	Re: 5-17-B 593	S90	715.26		172.26
Oct. 12	.....	317		172.26	000.00
1929					
Sept. 16	8-20 906	S131	185.09		185.09
Oct. 14	.....	411		185.09	000.00

*In red ink

[94]

EXHIBIT E

June 30, 1928

H. Koch & Sons, Inc.,
 416 Natoma Street,
 City

Est #155-8 Re: 5-17-B
 2581 Long brackets) complete with
 2528 short “ pins & cups

5109 @ 14¢ ea 715.26
 715.26

Entered 593

[Endorsed]: Filed March 11, 1940.

[95]

[Title of District Court and Cause—No. 21,273-R.]

DEFENDANTS' INTERROGATORIES

Now come Defendants above named and pursuant to the provisions of Rule 33 of the Rules of Civil Procedure propound the following interrogatories to be answered under oath by the duly authorized and the thereto best qualified officer of plaintiff:

1. With respect to the patent in suit, state precisely:

(a) The date and place of conception of the alleged invention disclosed by the said patent and defined by the claims thereof;

(b) The date and place of the first disclosure of the said alleged invention and to whom such disclosure was made. [96]

(c) The date and place of the beginning of the first drawings of the said alleged invention, and by whom made and when and where completed.

(d) The date and place of the beginning of the first written description of the said alleged invention, and by whom written and when and where completed.

(e) The date and place of the first reduction to practice of the said alleged invention.

(f) The date and place of the first commercial introduction and/or sale of the said alleged invention (1) anywhere, (2) in Canada, (3) in the United States, and by whom introduced and sold in each of said places.

2. Produce and furnish defendants with copies of the first drawings of the said alleged invention,

of the first written description of the said alleged invention, if any made prior to the application for the said Letters Patent in suit.

3. Produce and permit defendants to prepare copies of any documentary evidence relating to any development of the alleged invention prior to the filing date of the application of the patent in suit herein including any models and sales of any such luggage or fixture.

4. State in writing the names and addresses of the parties to whom luggage or fixtures made in accordance with the alleged invention disclosed by the patent in suit were sold, if any, prior to the filing date of the application for the patent in suit, and state the dates of each transaction, and furnish defendants with copies of the invoices, orders, or other documents showing the transactions.

Dated: February 7, 1940.

GEORGE B. WHITE,
Attorney for Defendants.

Service of a copy of the foregoing defendants' interrogatories is acknowledged this 7th day of February, 1940.

TOWNSEND & HACKLEY,
JACK E. HURSH,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 9, 1940. [97]

[Title of District Court and Cause—No. 21,273-R.]
PLAINTIFF'S ANSWERS TO DEFENDANTS'
INTERROGATORIES [98]

Now comes the plaintiff above named and through its General Manager, Emanuel J. Shoemaker, and answers defendants' interrogatories as follows:

Interrogatory No. 1 (a): Early in November, 1928, at Kitchener, Ontario, Canada.

Interrogatory No. 1 (b): Early in November, 1928, at Kitchener, Ontario, Canada, to employees and officials of The L. McBrine Company, Limited, and shortly thereafter to Harold Shipman of Ottawa, Canada.

Interrogatory No. 1 (c): In November, 1928, in the offices of Harold Shipman, Patent Attorney, of Ottawa, Canada, by his draftsman.

Interrogatory No. 1 (d): In November, 1928, by Harold Shipman, in Ottawa, Canada.

Interrogatory No. 1 (e): In the plant of The L. McBrine Company, Limited, Kitchener, Ontario, Canada, in November, 1928.

Interrogatory No. 1 (f): First commercially introduced by The L. McBrine Company, Limited, at Kitchener, Ontario, Canada, in about December 1928, which commercial introduction was in Canada, and the invention was later introduced into the United States by Emanuel J. Shoemaker in February, 1929, and shortly thereafter, in the spring of 1929, the invention was manufactured and sold in the United States by Mendel-Drucker Company of Cincinnati, Ohio, which company has exploited

the invention since that date as have other companies in the United States.

Interrogatory No. 2: No drawings or written description of the invention were made prior to the application for the Letters Patent in suit. [99]

Interrogatory No. 3: Not any of the requested material is available.

Interrogatory No. 4: The records are not now available.

EMANUEL J. SHOEMAKER.

City of Kitchener,
Province of Ontario,
Dominion of Canada—ss.

Emanuel J. Shoemaker being first duly sworn, deposes and says that he has answered the above interrogatories on behalf of The L. McBrine Company, Limited, and he is General Manager of said The L. McBrine Company, Limited. He subscribed his name to the foregoing answers to the interrogatories and knows the contents thereof and that the answers are true to the best of his knowledge and belief.

EMANUEL J. SHOEMAKER.

Subscribed and sworn to before me this 22nd day of February, 1940.

Ontario, Canada (Seal) J. K. D. SIMS,
Notary Public in and for the City of Kitchener,
Province of Ontario, Dominion of Canada.

Receipt of a copy of the within answers to defendants' interrogatories is hereby acknowledged this 6th day of March, 1940.

GEORGE B. WHITE,
Attorney for Defendants.

[Endorsed]: Filed Mar. 8, 1940. [100]

[Title of District Court and Cause—No. 21,271-R.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause having been tried on March 12, 13, 14 and 15, 1940, after due consideration the Court makes the following Findings of Fact and Conclusions of Law, to wit: [101]

FINDINGS OF FACT

1. That the parties are residents and citizens respectively as alleged in the complaint.

2. That plaintiff is the owner of Letters Patent in suit No. 1,878,989, dated September 20, 1932, issued upon an application filed on December 24, 1928.

3. That claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of patent No. 1,878,989, are the claims relied upon by plaintiff.

4. That the invention of the patent in suit has had a great commercial success and has gone into wide and extensive use in the United States and elsewhere.

5. That the accused structures manufactured and sold by the defendants are fairly readable upon and respond to the relied upon claims of said patent in suit No. 1,878,989.

6. That the garment support shown in defendants' exhibits K, L and S was invented by Maurice Koch and was known and used by H. Koch & Sons in May, 1928, and luggage embodying fixtures similar to those in exhibits K, L and S were known and publicly sold in the summer of 1928 and thereafter.

7. The prior Koch luggage constitutes an anticipation of the relied upon claims of the Shoemaker patent in suit.

CONCLUSIONS OF LAW

1. Claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of the Shoemaker patent No. 1,878,989 are, and each of them is, invalid and void, for anticipation by and for lack of invention over the garment support invented by Maurice Koch and used by H. Koch & Sons in May, 1928. [102]

2. If valid, the relied upon claims of the Shoemaker patent No. 1,878,989 would be infringed by the accused structures of the defendants.

3. Each side will bear its own costs.

MICHAEL J. ROCHE,
United States District Judge.

Dated: San Francisco, California, July 29th,
1940.

Receipt of a copy of the within plaintiff's proposed findings of fact and conclusions of law is herewith acknowledged this 11th day of July, 1940.

J. E. TRABUCCO,
Attorney for Defendants.

[Endorsed]: R. L. Lodged 7/11/40. Wm. J. Crosby.

[Endorsed]: Filed July 29, 1940. [103]

[Title of District Court and Cause—No. 21,273-R.]
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause having been tried on March 12, 13, 14 and 15, 1940, after due consideration the Court makes the following Findings of Fact and Conclusions of Law, to wit: [104]

FINDINGS OF FACT

1. That the parties are residents and citizens respectively as alleged in the complaint.

2. That plaintiff is the owner of Letters Patent in suit No. 1,878,989, dated September 20, 1932, issued upon an application filed on December 24, 1928.

3. That claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of patent No. 1,878,989, are the claims relied upon by plaintiff.

4. That the invention of the patent in suit has had a great commercial success and has gone into

wide and extensive use in the United States and elsewhere.

5. That the accused structures manufactured and sold by the defendants are fairly readable upon and respond to the relied upon claims of said patent in suit No. 1,878,989.

6. That the garment support shown in defendants' exhibits K, L and S was invented by Maurice Koch and was known and used by H. Koch & Sons in May, 1928, and luggage embodying fixtures similar to those in exhibits K, L and S were known and publicly sold in the summer of 1928 and thereafter.

7. The prior Koch luggage constitutes an anticipation of the relied upon claims of the Shoemaker patent in suit.

CONCLUSIONS OF LAW

1. Claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of the Shoemaker patent No. 1,878,989 are, and each of them is, invalid and void, for anticipation by and for lack of invention over the garment support invented by Maurice Koch and used by H. Koch & Sons in May, 1928. [105]

2. If valid, the relied upon claims of the Shoemaker patent No. 1,878,989 would be infringed by the accused structures of the defendants.

3. Each side will bear its own costs.

MICHAEL J. ROCHE,
United States District Judge.

Dated: San Francisco, California, July 29th, 1940.

Receipt of a copy of the within plaintiff's proposed findings of fact & conclusions of law is herewith acknowledged this 11th day of July, 1940.

GEORGE B. WHITE,

Attorney for Defendants.

[Endorsed]: R. L. Lodged 7/11/40. Wm. J. Crosby.

[Endorsed]: Filed July 29, 1940. [106]

In the United States District Court for the Northern District of California, Southern Division
Civil Action No. 21,271-R
For Infringement of U. S. Letters Patent
No. 1,878,989

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-partners doing business under the name and style of BALKAN TRUNK & SUITCASE CO.,

Defendants.

FINAL DECREE

This cause came on to be heard and was argued by counsel and submitted to the Court for decision;

and thereupon, upon consideration thereof it was ordered, adjudged and decreed, as follows: [107]

That Claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of Letters Patent of the United States No. 1,878,989, granted on September 20, 1932, to Emanuel J. Shoemaker, Assignor to The L. McBrine Company, a corporation, being the patent claims sued on in this cause, are, and each of them is, void and invalid in law.

That the bill of complaint herein be and the same is hereby dismissed with each side bearing its own costs.

Dated: This 29th day of July, 1940.

MICHAEL J. ROCHE,
United States District Judge.

Receipt of a copy of the plaintiff's proposed within final decree is herewith acknowledged this 11th day of July, 1940.

J. E. TRABUCCO,
Attorney for Defendants.

[Endorsed]: Lodged 7/11/40. Wm. J. Crosby.

[Endorsed]: Filed July 29, 1940. Walter B. Maling, Clerk. By J. P. Welsh, Deputy Clerk.

[108]

In the United States District Court for the Northern District of California, Southern Division

Civil Action No. 21,273-R

For Infringement of U. S. Letters Patent
No. 1,878,989

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

HERMAN KOCH, doing business under the name
and style of H. KOCH & SONS, and HAROLD
M. KOCH, WILLIAM L. KOCH, and RE-
BECCA KOCH, Defendants.

FINAL DECREE

This cause came on to be heard and was argued by counsel and submitted to the Court for decision; and thereupon, upon consideration thereof it was ordered, adjudged and decreed, as follows: [109]

That claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of Letters Patent of the United States No. 1,878,989, granted on September 20, 1932, to Emanuel J. Shoemaker, Assignor to The L. McBrine Company, a corporation, being the patent claims sued on in this cause, are, and each of them is, void and invalid in law.

That the bill of complaint herein be and the same is hereby dismissed with each side bearing its own costs.

Dated: This 29th day of July, 1940.

MICHAEL J. ROCHE,
United States District Judge.

Receipt of a copy of the within plaintiff's proposed final decree is herewith acknowledged this 11th day of July, 1940.

GEORGE B. WHITE,

Attorney for Defendants.

[Endorsed]: Filed July 29, 1940. Walter B. Maling, Clerk. By J. P. Welsh, Deputy Clerk.

[110]

[Title of District Court and Cause—No. 21,271-R.]

NOTICE OF APPEAL

Notice is hereby given that The L. McBrine Company, Limited, the plaintiff in the above entitled case, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment entered in this case by the [111] Honorable Michael J. Roche on July 29, 1940 holding the patent in suit invalid and dismissing plaintiff's complaint and from the portions of the decision of said Judge adverse to plaintiff and from the Findings of Fact, Conclusions of Law, and Rulings which were adverse to plaintiff.

CURTIS B. MORSELL,

A. L. MORSELL, JR.,

633 Empire Building,

Milwaukee, Wisconsin,

TOWNSEND & HACKLEY,

ROY C. HACKLEY, JR.,

JACK E. HURSH,

Crocker Building,

San Francisco, California,

Attorneys and Counsel

for Plaintiff.

[Endorsed]: Filed Oct. 24, 1940. [112]

[Title of District Court and Cause—No. 21,273-R.]

NOTICE OF APPEAL

Notice is hereby given that The L. McBrine Company, Limited, the plaintiff in the above entitled case, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment entered in this case by the [113] Honorable Michael J. Roche on July 29, 1940 holding the patent in suit invalid and dismissing plaintiff's complaint and from the portions of the decision of said Judge adverse to plaintiff and from the Findings of Fact, Conclusions of Law, and Rulings which were adverse to plaintiff.

CURTIS B. MORSELL,
 A. L. MORSELL, JR.,
 633 Empire Building,
 Milwaukee, Wisconsin,
 TOWNSEND & HACKLEY,
 ROY C. HACKLEY, JR.,
 JACK E. HURSH,
 Crocker Building,
 San Francisco, California,
 Attorneys and Counsel
 for Plaintiff.

[Endorsed]: Filed Oct. 24, 1940. [114]

[Title of District Court and Causes—21,271-R and 21,273-R.]

ORDER RE COST BOND ON APPEAL

As the above entitled causes were tried together and upon the same record, and both have been

appealed to the Circuit Court of Appeals for the Ninth Circuit at the same time, it is hereby ordered and decreed that only one cost bond on appeal, in the amount of Two Hundred Fifty Dollars (\$250) need be filed in these actions.

Dated: October 25, 1940.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Oct. 25, 1940. [115]

[Title of District Court and Causes—21,271-R and
and No. 21,273-R.]

The premium charged for this bond is \$10.00 per annum.

4478318

Whereas, The L. McBrine Company, Limited, Plaintiff herein, has prosecuted or is about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and decree rendered in the above entitled causes on the 29th day of July, 1940, by the District Court of the United States for the Northern District of California, Southern Division.

Now, therefore, in consideration of the premises, the undersigned, Fidelity and Deposit Company of Maryland, a corporation duly organized and licensed by the laws of the State of California to do a general surety business in the State of Cali-

ifornia, does hereby undertake and promise on the part of The L. McBrine Company, Limited, Appellant, that they will prosecute their appeal to effect and answer all costs if they fail to make good their appeal, not exceeding the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, to which amount said Fidelity and Deposit Company of Maryland acknowledges itself justly bound.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above entitled matter may, upon notice to the Fidelity and Deposit Company of Maryland, of not less than ten (10) days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

Signed, sealed and dated this 25th day of October, 1940.

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,

By GUERTIN CARROLL,

Attorney-in-Fact.

Attest G. KEHLENBECK,

Attesting Agent.

State of California,
City and County of San Francisco—ss.

On this 25th day of October, A. D. 1940, before me, Peter Tamony, a Notary Public in and for the

City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared Guertin Carroll, Attorney-in-fact, and G. Kehlenbeck, Agent of the Fidelity and Deposit Company of Maryland, a corporation, known to me to be the persons who executed the within instrument on behalf of the corporation therein named and acknowledged me that such corporation executed the same, and also known to me to be the persons whose names are subscribed to the within instrument as the Attorney-in-fact and Agent respectively of said corporation, and they, and each of them, acknowledged to me that they subscribed the name of said Fidelity and Deposit Company of Maryland thereto as principal and their own names as Attorney-in-fact and Agent respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year first above written.

(Seal)

PETER TAMONY,

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires Nov. 20, 1943.

Approved this 25th day of October, A. D. 1940.

MICHAEL J. ROCHE,

Judge, District Court.

[Endorsed]: Filed Oct. 25, 1940. [116]

In the United States District Court for the Northern District of California, Southern Division

Civil Actions Nos. 21271-R and 21273-R

THE L. McBRINE COMPANY, LTD.,

Plaintiff,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-partners doing business under the name and style of BALKAN TRUNK & SUITCASE CO.,

Defendants.

THE L. McBRINE COMPANY, LTD.,

Plaintiff,

vs.

HERMAN KOCH, doing business under the name and style of H. KOCH & SONS, and HAROLD M. KOCH, WILLIAM L. KOCH and REBECCA KOCH,

Defendants.

ORDER OF CONSOLIDATION

Good cause appearing therefor, it is hereby ordered, [117] the Honorable Circuit Court of Appeals consenting thereto, that for the purpose of appeals in each of the above entitled causes one Printed Record on Appeal shall serve for both actions and may include pleadings, exhibits, and

transcript of evidence pertinent to both actions designated by counsel for the respective parties.

Hereafter, the consolidated actions shall be considered as a single appeal with papers, pleadings and briefs filed on behalf of any party serving, when applicable, for both actions.

Dated: Oct. 25, 1940.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Oct. 25, 1940. [118]

[Title of District Court and Causes.]

STATEMENT OF POINTS RELIED UPON

Now comes the plaintiff, The L. McBrine Company, Limited, a corporation of Kitchener, Ontario, Canada, by its attorneys, and having filed appeals to the United States Circuit Court of [119] Appeals for the Ninth Circuit from the Final Decrees heretofore entered in the above consolidated causes by the District Court on or about July 29, 1940, finding in favor of the defendants as to plaintiff's complaints and dismissing plaintiff's complaints, and states that upon its appeal it will rely upon the following points:

1. That the Court erred in dismissing plaintiff's complaints as to the defendants.
2. That the Court erred in finding (Findings of Fact Nos. 6 in both actions) that the garment support shown in defendants' exhibits K, L and S was

invented by Maurice Koch and was known and used by H. Koch & Sons in May, 1928, and luggage embodying fixtures similar to those in exhibits K, L and S were known and publicly sold in the summer of 1928 and thereafter.

3. That the Court erred in finding (Findings of Fact Nos. 7 in both actions) that the prior Koch luggage constitutes an anticipation of the relied upon claims of the Shoemaker patent in suit.

4. That the Court erred in concluding (Conclusions of Law Nos. 1 in both actions) that claims 4, 8, 10, 11, 12, 19, 23, 24, 26 and 27 of the Shoemaker patent No. 1,878,989 are, and each of them is, invalid and void, for anticipation by and for lack of invention over the garment support invented by Maurice Koch and used by H. Koch & Sons in May, 1928.

5. That the Court erred in not finding that the alleged prior invention, and prior knowledge and use claimed for the Maurice Koch & H. Koch & Sons activities from May, 1928 and thereafter, were not established by the character of proof required under the law to overthrow a patent. [120]

6. That the Court erred in not finding that defendants' exhibits K, L and S exemplify fixture-equipped luggage cases constructed just prior to the hearing of these causes and do not establish, beyond a reasonable doubt, the form of structure in fact produced by Maurice Koch in May, 1928.

7. That the Court erred in not finding that the fixtures in defendants' exhibits K, L and S do not have the claimed elements and resulting advantages

of the structure of the Shoemaker patent in suit.

8. That the Court erred in admitting in evidence over plaintiff's objections the Austrian and United States patents to Lazar Storch, defendants' exhibits D and E (Reporter's transcript pp. 90, 91 and 92).

9. That the Court erred in admitting in evidence over plaintiff's objections the Maurice Koch models, defendants' exhibits K, L and S (Reporter's transcript pp. 105 and 129).

10. That the Court erred in admitting in evidence over plaintiff's objections a drawing, defendants' exhibit U (Reporter's transcript p. 141).

11. That the Court erred in admitting in evidence over plaintiff's objections alleged models of the Storch patents, defendants' exhibits V and W (Reporter's transcript p. 142).

THE L. McBRINE COMPANY,
LIMITED,

By CURTIS B. MORSELL,
A. L. MORSELL, JR.,

633 Empire Building,

Milwaukee, Wisconsin,

TOWNSEND & HACKLEY,

ROY C. HACKLEY, JR.,

JACK E. HURSH,

Crocker Building,

San Francisco, California,

Attorneys and Counsel for

The L. McBrine Company,

Limited.

[Title of District Court and Cause—No. 21,271-R.]

ORDER

Good cause appearing therefor, it is hereby ordered that all original exhibits introduced at the trial of this cause be forwarded to the Circuit Court of Appeals for the Ninth Circuit.

Dated: October 25, 1940.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Oct. 25, 1940. [122]

[Title of District Court and Cause—No. 21,273-R.]

ORDER

Good cause appearing therefor, it is hereby ordered that all original exhibits introduced at the trial of this cause be forwarded to the Circuit Court of Appeals for the Ninth Circuit.

Dated: October 25, 1940.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Oct. 25, 1940. [123]

[Title of District Court and Causes.—Nos. 21,271-R and 21,273-R]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the United States District Court
for the Southern Division in the Northern Dis-
trict of California:

You are hereby requested to certify as the com-
bined record on appeal in the above consolidated
cases to be filed [124] in the United States Circuit
Court of Appeals for the Ninth Circuit for use in
the consolidated appeal, pursuant to a stipulation
and order heretofore entered, the following ma-
terial:

1. Bill of Complaint (McBrine vs. Silver-
man et al).
2. Order Granting Leave to Plaintiff to Take
Depositions (McBrine vs. Silverman et
al).
3. Stipulation (McBrine vs. Silverman).
4. Motion and Notice of Motion for Bill of
Particulars (McBrine vs. Silverman et al).
5. Plaintiff's Bill of Particulars Nos. I to
IX inclusive (McBrine vs. Silverman et
al).
6. Plaintiff's Bill of Particulars Nos. Xa to
Xg (McBrine vs. Silverman et al).
7. Amended Answer (McBrine vs. Silverman
et al).
8. Bill of Complaint (McBrine vs. Koch et
al).

9. Order Granting Leave to Plaintiff to Take Depositions (McBrine vs. Koch et al).
10. Stipulation (McBrine vs. Koch et al).
11. Stipulation (McBrine vs. Koch et al).
12. Interrogatories (McBrine vs. Koch et al).
13. Defendants' Answers to Plaintiff's Interrogatories (McBrine vs. Koch et al).
14. Plaintiff's Bill of Particulars (McBrine vs. Koch et al).
15. Answer (McBrine vs. Koch et al).
16. Demand for Admission of Facts and of Genuineness of Documents (McBrine vs. Koch et al).
17. Admission of Documents (McBrine vs. Koch et al).
18. Stipulation (McBrine vs. Koch et al).
19. Plaintiff's Further Interrogatories (McBrine vs. Koch et al).
20. Defendants' Answers to Plaintiff's Interrogatories (McBrine vs. Koch et al). [125]
21. Defendants' Interrogatories (McBrine vs. Koch et al).
22. Plaintiff's Answers to Defendants' Interrogatories (McBrine vs. Koch et al).
23. Findings of Fact and Conclusions of Law (McBrine vs. Silverman et al).
24. Findings of Fact and Conclusions of Law (McBrine vs. Koch et al).
25. Final Decree (McBrine vs. Silverman et al).
26. Final Decree (McBrine vs. Koch et al).

27. Plaintiff's Exhibits.

- No. 1—Printed copy of Shoemaker patent in suit No. 1,878,989.
- No. 2—Certified copy of assignment from Shoemaker to The L. McBrine Company, Ltd.
- No. 3—Catalog of Hartmann Trunk Co. (Physical exhibit).
- No. 4—Patent marking tag used on Hartmann luggage (Physical exhibit).
- No. 5—Tan leather luggage case manufactured by Hartmann Trunk Co. (Physical exhibit).
- No. 6—Blue leather luggage case manufactured by Hartmann Trunk Co. (Physical exhibit).
- No. 7—Luggage case manufactured by defendant H. Koch & Sons (Physical exhibit).
- No. 7a—Photograph of H. Koch & Sons wardrobe case
- No. 7b—Another photograph of H. Koch & Sons wardrobe case
- No. 8—Luggage case manufactured by defendants Silvermans et al (Physical exhibit)
- No. 8a—Photograph of Silvermans et al wardrobe case
- No. 8b—Another photograph of Silvermans et al luggage case

No. 9—Chart showing views of Shoemaker patent (Physical exhibit)

No. 10—Certified copy of Articles of Incorporation of The L. McBrine Company, Ltd. (Physical exhibit)

[126]

No. 11—Chart showing enlargement of Fig. 7 of Shoemaker patent (Physical exhibit)

No. 12—Certified copy of Consent Decree in McBrine vs. Maund et al (Physical exhibit)

No. 13—Letters which defendants Koch have admitted as genuine

28. Defendants' Exhibits

A. File wrapper of Shoemaker patent (Physical exhibit)

B. British patent to Schwarzenberger

C. British patent to Duverge

E. Certified copy of Austrian patent to Storch

E. Certified copy of Storch oath accompanying filing of United States patent application

F. Six printed patent copies in booklet designated F1 to F6

G. Eight printed patent copies in booklet designated G1 to G8

H. Nine printed patent copies in booklet designated H1 to H9

I. Levine patent. No. 2,091,931

- J. Pamphlet "How to Use Presto Portable Wardrobe" (Physical exhibit)
- K. Recently made model of early Koch case and fixtures (Physical exhibit)
- L. Recently made model of early Koch case and fixtures (Physical exhibit)
- M. Production list of Larkin Specialty Co.
- N. Ledger sheet of Larkin Specialty Co.
- O. Duplicate bill rendered Koch & Sons from Larkin Specialty Co.
- P. Photostatic copy of ledger sheet of June, 1938 sales
- Q1. Defendants' Interrogatories
- Q2. Answers to Defendants' Interrogatories
- R. Metal bracket cups of early Koch device (Physical exhibit) [127]
- S. Recently made Koch case with alleged early fixtures therein with bracket cups reversed (Physical exhibit)
- T. Luggage case of present Silvermans et al structure with Presto fixture (Physical exhibit)
- U. (For identification) Drawing re Wheary, Storch, Defendants', and Shoemaker's structures (Physical exhibit)
- V. Luggage case with lazy tong fixtures (Physical exhibit)

W. Another luggage case with lazy tong fixtures (Physical exhibit)

(Those exhibits above designated as "Physical" are not to be bound with the record but are to be transmitted as physical exhibits.)

29. Reporter's transcript of depositions of Emanuel J. Shoemaker and A. A. Ritter taken on behalf of plaintiff commencing in the middle of Page 5 of the transcript and omitting the following: Page 31, lines 5 through 18; from line 4 on Page 92 through line 18 on Page 94; the certificate on Pages 111 and 112
- 30 Transcript of evidence and proceedings before Judge Michael J. Roche on March 12, 13, 14 and 15, 1940, omitting from Page 2 to the beginning of the testimony of Irving C. Roemer on Page 17. Also omit the following: From line 10 on Page 85 through line 10 on Page 100, except retaining lines 14 through 29 on Page 91; from line 29, Page 137, through line 4 on Page 140; from line 16 through line 25 on Page 157; from line 14, Page 161, through line 14 on Page 163; from line 12 on Page 185 through line 24 on Page 186; from line 6, Page 215, through line 14 on Page 216.
31. Notices of Appeal
- 32 Statement of Points Relied Upon

33. Cost Bond on Appeal
34. This Designation of Contents of Record on Appeal
35. Clerk's Certificate

CURTIS B. MORSELL
TOWNSEND & HACKLEY
Attorneys and Counsel
for Plaintiff

[Endorsed]: Filed Oct. 25, 1940. [128]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 129 pages, numbered from 1 to 129, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of *McBrine vs. Silverman, et al.*, and *McBrine vs. Koch*, No. 21271-R, 21273-R, as the same now remain of file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Nineteen and 85/100 Dollars

(\$19.85) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 15th day of November A. D. 1940.

[Seal]

WALTER B. MALING,
Clerk.

WM. J. CROSBY,
Deputy Clerk. [129]

In the United States District Court
For the Northern District of California
Southern Division

Civil Action No. 21271R

For Infringement of U. S. Letters Patent

No. 1,878,989

THE L. McBRINE COMPANY, LIMITED

Plaintiff,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-
partners doing business under the name and
style of BALKAN TRUNK AND SUITCASE
CO.,

Defendants.

[130]

In the United States District Court
For the Northern District of California
Southern Division

Civil Action No. 21272S

For Infringement of U. S. Letters Patent
No. 1,878,989

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

HAROLD MAUND, doing business under the
name and style of VOGUE LUGGAGE CO.,
and CLIFFORD C. CASSIDY,
Defendants.

[131]

In the United States District Court
For the Northern District of California
Southern Division

Civil Action No. 21273R

For Infringement of U. S. Letters Patent
No. 1,878,989

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

HERMAN KOCH, doing business under the name
and style of H. KOCH & SONS, and HAR-
OLD M. KOCH, WILLIAM L. KOCH and
REBECCA KOCH,

Defendants.

[132]

TESTIMONY

Depositions de bene esse on behalf of the plaintiff in the above entitled causes, taken before Joseph M. Carney, a Notary Public in and for the County of Milwaukee, Milwaukee, Wisconsin, in lieu of Lawrence W. Nelson, beginning at 10:00 o'clock A. M., Tuesday, October 10, 1939, at the offices of Morsell, Lieber & Morsell, 633 Empire Building, Milwaukee, Wisconsin, pursuant to notices.

These depositions are taken de bene esse in accordance with the provisions of Section 863 of the Revised Statutes of the United States and Rule 26 of the Federal Rules of Civil Procedure.

The depositions are furthermore taken pursuant to order of the court granting leave to plaintiff to take the depositions prior to the filing of answers.

Pursuant to stipulations with counsel for the several defendants, the depositions are furthermore to be entitled for the three enumerated suits with one copy of the depositions to be filed for each of the suits.

It is furthermore stated that one set of exhibits will be marked for the three suits, the exhibits to be retained by counsel offering the same subject to inspection by opposing counsel, and to be delivered at the court prior to the hearings [133] of the several cases.

Present:

Curtis B. Morsell, Esq., of Morsell, Lieber & Morsell, representing The L. McBrine Company, Limited, Plaintiff;

Leverett C. Wheeler, Esq., of Wheeler, Wheeler, & Wheeler, Milwaukee, Wisconsin, representing the defendants Sol Silverman and Sam Silverman, co-partners doing business under the name and style of Balkan Trunk and Suitcase Co.

No appearance on behalf of the defendants Herman Koch, doing business under the name and style of H. Koch & Sons, and Harold M. Koch, William L. Koch, and Rebecca Koch, and the defendants Harold Maund, doing business under the name and style of Vogue Luggage Co., and Clifford C. Cassidy.

EMANUEL J. SHOEMAKER,

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows pursuant to questions propounded by C. B. Morsell:

Direct Examination

By Mr. Morsell:

Mr. Wheeler: I would like to enter a general statement. I am not appearing generally. I have not seen the pleadings and am here for the purpose of cross-examination only.

Mr. Morsell: [134]

Q. Please state your name, age, residence and occupation.

(Deposition of Emanuel J. Shoemaker.)

A. Emanuel J. Shoemaker; age 38; general manager of the L. McBrine Company, Limited, Kitchener, Ontario, Canada.

Q. Are you the Emanuel J. Shoemaker who is the patentee of United States Patent No. 1,878,989, dated September 20, 1932, on application filed December 24, 1928, which I now show to you, said patent being entitled "Hand Luggage"?

A. Yes, I am.

Q. Mr. Morsell: The patent identified by the witness is offered in evidence as Plaintiff's Exhibit 1, and the reporter is requested to so mark it.

(Said United States Patent No. 1,878,989, dated September 20, 1932, marked Plaintiff's Exhibit 1.)

Q. Was the application for this patent assigned to the L. McBrine Company, Limited of Kitchener, Canada? A. Yes.

Q. Is The L. McBrine Company the company you are connected with and of which you are the general manager? A. Yes.

Q. Can you produce a duly certified copy of the assignment of the invention covered by your patent in suit?

A. Yes. I have it here. [135]

Mr. Morsell: The assignment referred to by the witness, being transfer of the invention, patent to be issued thereon, from E. J. Shoemaker to The L. McBrine Company, Limited, is offered in evi-

(Deposition of Emanuel J. Shoemaker.)

dence as Plaintiff's Exhibit 2, and the reporter is requested to so mark it.

(Said assignment from E. J. Shoemaker to The L. McBrine Company, Limited, marked Plaintiff's Exhibit 2)

Q. Please examine the assignment and state who executed the same.

A. It was executed by myself.

Q. Do you recognize the signature thereon as your signature? A. Yes.

Q. Did you execute the assignment in the presence of two witnesses? A. I did.

Q. Do the witnesses' signatures appear on the document? A. They do.

Q. Please name them and state whether or not you recognize the signatures of the witnesses.

A. The names are Mildred Watson and Alice Schroeder, and I recognize them as being two clerks in the office of the attorney in which the signature was made.

Q. What attorney was that?

A. Harold C. Shipman of Ottawa, Ontario. [136]

Q. Did the witnesses sign the document in your presence? A. They did.

Q. Now, what is the date of execution of this assignment?

A. The 29th day of November, 1928.

Q. On what date was it recorded in the United States Patent Office? A. February 2, 1931.

(Deposition of Emanuel J. Shoemaker.)

Q. Please refer to the Shoemaker patent in suit, Plaintiff's Exhibit 1, and state what day the application for this patent was filed in the United States Patent Office.

A. It was filed December 24, 1928.

Q. What have you to say as to your work and developments which led up to the filing of the application for this patent?

A. I had developed the invention during November.

Q. State the year.

A. 1928. What was that question again?

Q. What have you to say as to your work and developments which led up to the filing of the application for this patent?

A. And I tried to develop a case that would carry clothing in a folded or hanging position in as small dimension as possible.

Q. Well, your development work, I presume, preceded to some extent, the preparation and filing of the patent application, is that correct? [137]

A. Yes. The development work was done during November of 1928, and models were made.

Q. Models were made at the plant of The L. McBrine Company? A. They were.

Q. And were they tested and tried out?

A. They were.

Q. And how did they prove to be?

A. They proved to be very practical.

(Deposition of Emanuel J. Shoemaker.)

Q. Did you do anything about preparing and filing a Canadian application on the same invention?

A. We did that immediately, in November, 1928.

Q. How did the date of execution of your Canadian application compare with the filing date of your United States application?

A. The execution of the Canadian application was in November, 1928, but the filing—did you say of the Canadian application?

Q. Yes.

A. (Continuing) Of the Canadian application was dated January 10.

Q. What year? A. 1929.

Q. Prior to your conception and development of the invention, which led to your patent in suit, what types of wardrobe hand luggage were you familiar with? [138]

A. I was familiar with only one type at the time, one developed and marketed by a man named Winship.

Q. Please describe the fixture in this early case and explain the objections, limitations, or inadequacies of the same, if any. Please first explain briefly the characteristics of the fixture in the Winship device.

A. The Winship device consisted of a bracket that was located in the cover of the case near its free end, had a bar over which dresses were draped, and from that bar they hung into the well in the body of the case.

(Deposition of Emanuel J. Shoemaker.)

Q. How far could the fixture or frame in this Winship device be swung?

A. It was swung only a short distance from within the cover to not more than two inches outside of it.

Q. Just enough, then, to provide sufficient clearance to hang the garments over the bar on the free end of the fixture? A. Yes.

Q. And did the garments then drape down from the fixture along the extent of the cover and into a well in the body of the case?

A. That is it.

Q. Now, did this type of case and fixture have any objections or limitations, in your opinion? [139]

A. Yes. I felt, in the first place, that in order to hang garments of any length, or I should say of considerable length, it required a large case, and I saw the desirability of producing something that was more compact.

Q. In developing your improved hand luggage, what advantages and objects, if any, did you have in mind for attainment?

A. First of all, I wanted to produce a case that was considerably smaller than that which was then on the market but with the same, or, if possible, with greater capacity. I wanted the garments to be contained entirely in the cover and to be hung on the hanger or rack in such a way that they were carried in proper relationship to the carrying position of the case.

(Deposition of Emanuel J. Shoemaker.)

Q. Please refer to your patent in suit, Plaintiff's Exhibit 1, and read into the record the first paragraph on page 1 of the specification, and explain how your invention permits the attainment of the object there stated.

A. Paragraph 1 reads: "This invention relates to hand luggage and more particularly to a means for packing garments so that they may be supported in up-right position relative to the common manner in which luggage of this nature is carried."

Q. Please explain how your invention permits the attainment of that object, and in so doing you may refer to any of the figures [140] of the drawings in your patent.

A. As shown in Fig. 4, the garment may be first folded on a removable hanger rod indicated as No. 30, which is located near the hinged side of the cover, then draped over the free end of a folding rack, shown as 23 in the illustration, and the skirt of the garment is then allowed to drape down, and when thus packed in the cover it is hung in proper position to the carrying of the case.

Q. When the case is closed and carried, would the position of the frame in the cover in Fig. 4 represent the relationship of the garments in carrying position? A. Yes.

Q. Please read into the record paragraph 5 of page 1 of the specification of your patent and explain how your structure permits the accomplishment of this object.

(Deposition of Emanuel J. Shoemaker.)

A. Paragraph 5 reads: "A further object is to provide hand luggage having therein a garment supporting member carried relative to the hinged side of the upper or cover portion of the luggage and a removable hanger rod carried adjacent the said hinged side in coacting relationship to said supporting member."

Q. How does your structure carry out this object, with particular reference to the removable hanger carried adjacent the [141] hinged side of the cover in coacting relationship with the supporting member?

A. The supporting member being hinged or pivoted at the base of the cover, has a folding edge 23 over which the garments are draped after having been first folded over the removable rod 30.

Q. Where is that rod 30 located?

A. Which is located near the hinged side or base portion of the cover.

Q. Is it also located near the hinged side of the supporting member 12?

A. Yes; and near the hinged side of the supporting member 12.

Q. Why is it desirable to have the individual hanger rod or rods, designated 30 in your patent, removable?

A. The folding of the garment is more readily accomplished as shown in Fig. 3 than if it were fixed, which would necessitate a threading through of the garment in the case itself. In other words,

(Deposition of Emanuel J. Shoemaker.)

by having the rod removable the dress can be laid out on a bed or table, the rod inserted, and the primary fold accomplished as shown in Fig. 3. The rod is then returned to its position at the base of the rack 12, while it is in horizontal position over the body of the case.

Q. At this stage in the packing, how does the garment extend, with [142] reference to the supporting member 12 and with reference to the body section of the case? In other words, is the garment spread out, extended over the——

A. (Interposing) The garment is extended over the body and draped forward in front of the case.

Q. At this stage is the garment completely folded? A. For packing?

Q. Yes. A. No.

Q. When is the complete and final fold accomplished?

A. When you return the folding rack 12 to its vertical position in the cover.

Q. That would then be a movement of the rack from a horizontal position over the body to a vertical position within the cover? A. Right.

Q. Now, does your patent provide any means for retaining the rack and the garments thereon in this latter position within the cover?

A. Yes; as shown in Fig. 2, it may be retained with bands, or other means of a similar nature.

Q. With the mode of packing you have described and with the retention of the frame in the cover

(Deposition of Emanuel J. Shoemaker.)

by the bands, is the [143] packed garment completely housed within the cover of the case?

A. It is.

Q. Is there any advantage in having the hanger rods mounted within the hinged end of the cover aside from the folding arrangement which it permits you to give to the garments?

A. Yes. It concentrates the mechanical parts of the hanging arrangement in one location.

Q. Does this, therefore, leave all of the rest of the cover clear and free for the accommodation of garments in conserved space?

A. It does.

Q. Compare the manner in which the garment fixtures in the luggage case of your patent take care of garments as opposed to the earlier arrangement you spoke of.

A. The earlier arrangement, having a bar near the free end of the cover only, draped the garments from the bar vertically down into the so-called body of the case which was needed in order to accommodate the full length. A dress of 52 inches in length, for instance, required in the old construction a case at least 18 inches wide and a body 8 inches deep; whereas my invention allowed the same length to be packed in a case only 15 inches wide and without the use of the body section.

Q. In using the word "wide" are you referring to the dimension from [144] the top edge of the cover to the bottom edge of the cover? In other

(Deposition of Emanuel J. Shoemaker.)

words, are you referring to the vertical extent of the cover when it is in open position?

A. To the vertical extent from the hinge to the top edge of the cover when it is in vertical position.

Q. Can the invention of your patent be used for men's garments such as suits, as well as ladies' dresses and coats?

A. Yes, it can; and a modification of the hanger to accommodate suits and coats is shown in Fig. 11.

Q. After the development of your invention, were any pieces of hand luggage made up incorporating the features of your invention, and if so, state when and approximately where?

A. Yes. We manufactured in our plant in Kitchener during November, 1928, several models of this invention.

Q. Were these models tried out and tested?

A. They were, and found satisfactory.

Q. Did you do anything with one of these cases made up in subsequent months? Did you ever use one on a trip?

A. Yes. One was used in February of 1929 on a trip from Kitchener to Cincinnati.

Q. Who used that case? A. I did. [145]

Q. You used the case in traveling from Kitchener, Canada to Cincinnati, Ohio? A. Yes.

Q. Did the case function satisfactorily on that trip? A. It did.

Q. And where did you go on that trip? Did you visit any concern in Cincinnati?

(Deposition of Emanuel J. Shoemaker.)

A. I went to the Mendel-Drucker Company of Cincinnati.

Q. What is the Mendel-Drucker Company?

A. Manufacturers of trunks and luggage.

Q. At the time of that trip did you show your new luggage case to officials of Mendel-Drucker?

A. I did.

Q. What was their attitude with respect to it?

A. They accepted it as a marked development in luggage construction and requested permission to manufacture it under a license in the United States.

Q. Did the L. McBrine Company then grant a license to Mendel-Drucker permitting Mendel-Drucker to manufacture and sell luggage under your patent in the United States? A. Yes.

Q. And has the Mendel-Drucker Company manufactured and sold luggage [146] in the United States under your patent? A. They have.

Q. Since about what date, can you state?

A. Since sometime in 1929.

Q. Are there any other United States concerns which are manufacturing and selling wardrobe hand luggage under licenses from The L. McBrine Company to them under your patent in suit?

A. Yes. There is the Wheary Trunk Company of Racine and the Hartmann Trunk Company of Racine.

Q. Do you know whether luggage cases which were made and sold in the United States under

(Deposition of Emanuel J. Shoemaker.)

your patent by these licensees have proven to be satisfactory and successful?

A. Yes, they have.

Q. Are they sold extensively throughout the United States?

A. They are sold practically everywhere in the United States because these concerns operate nationally and I have seen cases made by them in stores in various parts of the United States.

Q. Would you say that these three concerns which hold licenses under your patent are representative concerns in the industry in this country?

A. Yes, I certainly would.

Q. Are they among the leaders? [147]

A. They are.

Q. Did you solicit these companies for licenses, or did they approach you voluntarily?

A. In each case they approached us voluntarily.

Q. Is your invention being exploited in Canada by The L. McBrine Company? A. It is.

Q. Can you give us a statement as to what extent?

A. Well, since I invented it we have made at least 150,000.

Q. And they have been sold in Canada?

A. And they have been sold in Canada.

Q. Gone into usage?

A. Used quite extensively.

Q. Did you have a Canadian patent issued on your invention? A. Yes, I did.

(Deposition of Emanuel J. Shoemaker.)

Q. Has your United States patent been of monetary value to your company? A. Yes, it has.

Q. Do you receive money for the license or license rights?

A. We receive money, and other considerations in the form of exchange of ideas from each of them.

Q. Aside from the monetary standpoint, your patent has been of [148] value to your company in exchange of ideas and closer working relationship with these mentioned leading United States companies, is that correct? A. Yes, it has.

Q. Has it given you added prestige in the industry? A. It has.

Q. Aside from the concerns mentioned from the United States, have you been approached by other United States manufacturers relative to obtaining licenses under your patent in suit?

A. Yes, I have been approached by the Vogue Luggage Company of San Francisco, the Triangle Manufacturing Company of Oshkosh, and several others, of which my attorneys have the details.

Q. Do you know whether or not Balkan Trunk & Suitcase Company, Vogue Luggage Company, and H. Koch & Sons, all of San Francisco, California, were notified, prior to the filing of infringement suits, of their alleged infringements of your patent in suit?

A. Yes, I know that last spring my attorneys notified them by registered mail of the infringement, and subsequent correspondence with them has

(Deposition of Emanuel J. Shoemaker.)

been carried on with a view to explaining to them the manner in which we consider they are infringing, and generally to avoid suit.

Q. But in these particular instances the results of the correspon- [149] dence were unsatisfactory and suits had to be filed, is that correct?

A. That is correct.

Q. Is The L. McBrine Company, Limited, a corporation? A. It is.

Q. Under the laws of what government is it incorporated?

A. It is incorporated under the laws of the Province of Ontario in Canada.

Q. Where is the principal place of business of the L. McBrine Company, Limited?

A. In Kitchener, Ontario, Canada.

Q. Is your office and factory located there?

A. Yes.

Q. Is that the place of your residence?

A. Yes.

Mr. Morsell: That is all. You may take the witness, Mr. Wheeler. [150]

Cross Examination

By Mr. Wheeler:

Q. How long have you been with the plaintiff company? A. Over 21 years.

Q. During that time did the plaintiff make suitcases or parts of suitcases? A. Yes.

Q. All of that time? A. All of that time.

Q. Did you have occasion at any time to ex-

(Deposition of Emanuel J. Shoemaker.)

amine the suitcases and parts of suitcases made by others? A. Yes.

Q. You were familiar only with the one made by Winship?

A. Speaking of a so-called wardrobe suitcase, yes.

Q. That was the only one that you were familiar with? A. Yes.

Q. Was The McBrine Company making wardrobe suitcases during this period that you were with them?

A. Well, it was a fairly new development during about 1927; before that most suitcases were made without any hanging facilities except those that might be construed as so-called wardrobe trunks which had been on the market. [151]

Q. And it was common, was it not, during that period, to use racks around which garments could be folded preparatory to putting them into suitcases or boxes, any kind of packaging?

A. It may have been, but nothing that was supplied as standard equipment in a case.

Q. Not as equipment for the case but simply as a loose folder around which the garment could be wrapped? A. In certain forms possibly.

Q. Yes. And it was common, was it not, to use a clothes support with a cross rod or roller at one end? A. I wouldn't say that it was.

Q. You are not familiar with anything of that kind? A. No.

(Deposition of Emanuel J. Shoemaker.)

Q. What kind of wrapping forms were you familiar with?

A. Only those used in wardrobe trunks as hangers.

Q. Were those wrapping forms, or——

A. (Interposing) Well, if they can be considered wrapping forms. They were purely a hanger as might be used in an ordinary clothes closet.

Q. Were you not familiar with wrapping forms that were used for packaging garments shipped from a department store to its customer? [152]

A. No.

Q. Were you responsible for an order sent in June, 1928, to the Milwaukee Stamping Company for one of their fixtures intended to be pivoted in a suitcase? A. Yes.

Q. You remember that fixture? A. Yes.

Q. And that was a generally U-shaped frame that was intended to be pivoted to the cover of a suitcase near the hinge? A. No.

Q. What was it? Describe it.

A. That was simply a fixture that was ordered from another that they had offered for sale, made to dimensions that I specified, and which I intended to use in another way entirely than fastening in the lid. I later discarded it because it was not practical.

Q. Did you order it made by them or did you order it from their stock?

A. I ordered it made by them.

Q. What was the structure of it?

(Deposition of Emanuel J. Shoemaker.)

A. It was substantially U-shaped, pivoted at the extreme ends of the "U". [153]

Q. Pivoted to what?

A. To another plate, to two other plates, which could then be fastened into a box or case of some kind.

Q. Fastened in what way?

A. By what means, do you mean?

Q. Fastened in what way in the box or suitcase?

A. I don't know just what you mean.

Q. You say this clothes frame was pivoted to a plate that was fastened in the suitcase?

A. Yes.

Q. How was it fastened in the suitcase? How was the plate fastened in the suitcase?

A. It was riveted in.

Q. The plate was riveted in? A. Yes.

Q. Where in the case?

A. In the body of the case.

Q. As distinguished from the cover?

A. Yes.

Q. And you didn't fasten this frame in the cover? A. Positively not.

Q. Not at all? [154]

A. Positively not.

Q. Do you testify that you didn't know that the Milwaukee Stamping Company were making frames of that kind for attachment in the cover of the suitcase in June, 1928?

A. What they showed me was a fixture very

(Deposition of Emanuel J. Shoemaker.)

similar to that being used by Winship, which was not adaptable to my style of case.

Q. Was it a U-shaped frame?

A. It was a U-shaped frame.

Q. And was it resilient, made of spring metal?

A. No, I wouldn't say it was spring metal. It was possibly a half-inch band iron—I don't know if you could call it that or not.

Q. It was not a round rod, round in cross-section?
A. No.

Q. Did they show you a frame that was made of a round rod with extremities out-turned so that they could be pivoted in the sidewalls of a suitcase cover?
A. No.

Q. The frame that you ordered from them was made that way, was it not?

A. No. With a round rod? Q. Yes. [155]

A. No, positively.

Q. In June, 1928, you didn't order any frame made from a round rod? A. No.

Q. Or any frame having the ends out-turned to serve as pivotal connections?

A. Made of a round rod or having the ends—

Q. (Interposing) —having a round rod and having the extremities out-turned so that they could be used as pivot studs? A. No.

Q. I will call your attention to Fig. 10 of your patent. Have you made suitcases with garment supports and supporting means unattached to the cover as illustrated in Fig. 10?

(Deposition of Emanuel J. Shoemaker.)

A. We made some, but did not adopt them as regular production. We had some made.

Q. Do you claim a structure of that kind is part of your invention? A. Yes.

Q. What claim of your patent calls for that structure?

Mr. Morsell: I want to enter an objection there. The witness has not been qualified as an expert in patent matters and particularly in patent and claim interpretation, and should not be called upon to attempt to construe the technical claims [156] of his patent.

Mr. Wheeler: I think that question is not technical.

A. Well, I considered that construction was covered, from the interpretation given me by the attorney who filed the application.

Q. In Fig. 10 the garment supporting member is supported on the hinged side of the cover, is it not? A. Yes.

Q. But it is not hinged to the cover in any way?

A. I can't tell that from the drawing.

Q. I will call your attention to the description of Fig. 10 on page 2, lines 77, et cetera, of your patent. A. Yes.

Q. And would you say that in Fig. 10 the intention is to show a hinged member or one that is not hinged? A. One that is not hinged.

Q. Now, refer to Fig. 7 of your drawings. I will ask you where the connection is between the

(Deposition of Emanuel J. Shoemaker.)

member 12 and the cover of the suitcase in that view. A. To the free end of the cover.

Q. At point 22? A. At point 22. [157]

Q. And is the member 23, or the edge 23 of the member 12 on the free end of the body, or is it a substantial distance from the free end of the body?

A. It is some distance from the free end of the body.

Q. There is a compartment between the support 9 and the free end of the body, is there not?

A. Yes.

Q. Now, in Fig. 10 is there any difference between the clothes support illustrated in that view and any other support upon which clothing may be wrapped so far as the functioning of the device is concerned?

A. From my experience, I would say yes, in view of the fact that the rod 30 that carries the primary fold is removable.

Q. The rod 30 is in place when the device is functioning, is it not?

A. When it is in packed position, yes.

Q. Now, does it make any difference whether that garment support is placed in a suitcase or in any other box?

A. I would say it depends upon how the other box is carried.

Q. The difference, then, is the way in which the box is carried and not in the structure itself?

A. Well, that could be one difference. [158]

(Deposition of Emanuel J. Shoemaker.)

Q. Well, is there any other difference?

A. I guess my limited technical knowledge prevents me from seeing any possible differences.

Q. So far as you can see there is no difference in structure or in function between the member 12 applied in a suitcase, and the member 12 when applied in any other box? A. No.

Q. And that would be true also of the member 12 combined with the rod 30, would it not?

A. It probably would.

Q. Now, if the user so desired, he could fold the garment starting with the free edge 23 and ending with draping it over the rod 30 and the adjacent end of the member 12, could he not?

A. Yes.

Q. Now, I will call your attention to Fig. 3 of your patent. Do you regard this figure as showing your invention?

A. It indicates one of the operations in packing.

Q. It simply illustrates how a garment may be folded around any kind of a clothes supporting member, does it not? A. Yes.

Q. When your application was pending in the Patent Office, it was placed in interference, was it not? [159] A. Yes.

Q. And you inserted three claims as claims 13, 14 and 15, at the suggestion of the Official Examiner, isn't that correct? I have the file history here.

A. I haven't the details. Without going into them all I wouldn't be prepared to answer.

(Deposition of Emanuel J. Shoemaker.)

Q. Well, you did put in certain claims into your application as a result of the Examiner's suggestion, and for the purpose of [160] interference did you not?

A. I can't recall that. That is, I can't recall the details as to whether there were any inserted, cancelled, or just what change was made.

Q. You know that there was an interference, do you not? A. Yes.

Q. And certain claims that were involved in that interference were cancelled from your application, were they not?

A. I know something was done as a result of the interference, but I can't tell you what.

Q. You know that you lost the interference, that it was decided against you? Do you know that?

A. No.

Q. You do not know that?

A. I say "no."

Q. You don't know that judgment of priority was rendered against you in that interference?

A. I don't know that.

Q. Were you consulted by your attorney in connection with that interference? A. Yes.

Q. Did your attorney inform you as to the final decision? [161]

A. The interference action resulted in an exchange of licenses with the Wheary Trunk Company.

(Deposition of Emanuel J. Shoemaker.)

Q. That was a result of the interference, was it?

A. Yes.

Q. Was that exchange made at that time?

A. Yes.

Q. Wheary licensed you to make what was described in the interference counts, did they?

A. I don't understand that question.

Q. The Wheary Trunk Company gave you a license, or gave The McBrine Company, the plaintiff here, a license, did they not?

A. Did Wheary Company give McBrine Company a license?

Q. Yes. A. Yes.

Q. A license under what patent?

A. I haven't the details with me.

Q. Count 13 of the interference issue reads as follows: "13. In a case type luggage carrier including a main section member and a cover member, hingedly connected to one marginal edge thereof, a garment carrying frame, means hingedly mounted the garment carrying frame for movement independently of the cover member to lie over the main section member and for movement [162] substantially parallel with that of the cover member and means whereby the point of pivot of the garment carrying frame is disposed within the cover member when the garment carrying frame and the cover member are closed over the main section." Do you understand from that description that the garment carrying frame was pivoted to the cover

(Deposition of Emanuel J. Shoemaker.)

member in such a way that the pivotal connection was within the cover member when the suitcase was closed? A. May I read that?

(Handed to witness)

Mr. Morsell: Objection. It is thought that the claim would speak for itself, and the witness' statement now, many years after the framing of the claim and the prosecution of the interference, is not of any value as to what is or is not meant by the phraseology of the claim.

Mr. Wheeler: The question relates to the understanding of the witness as to one feature specified in the claim. If you will now read the question, Mr. Reporter.

(Question read by reporter.)

A. Yes.

Q. And you understand that that connection was made near the cover hinge, do you not? [163]

A. Adjacent it.

Q. That is your answer, "Adjacent it"?

A. That is my understanding of the matter now.

Q. Yes. When you cancelled that claim from your application, you conceded that you were not the inventor of that particular claim, did you not?

A. At this stage I am not prepared to say that because this happened some years ago and the action was necessarily taken by my counsel.

Q. And you don't remember whether at that time you understood that you were conceding that

(Deposition of Emanuel J. Shoemaker.)

you were not the inventor of the subject-matter of that claim? A. No.

Q. You have no recollection of that?

A. Not a clear recollection.

Q. Do you have any recollection that you made a concession when you cancelled that claim?

A. My recollection is that each of us, Wheary and ourselves, made an adjustment or a concession to facilitate the granting of our respective patents.

Q. There were other parties to that interference, were there not?

A. There were at first. It finally dwindled down to Wheary and [164] myself. I don't recall the other details.

Q. You do not remember whether Joseph Berg and Edwin R. Manning had an application that was in that interference?

A. I wouldn't say that definitely without referring to the file.

Q. Do you remember that George P. Echert's application was in the interference?

A. I don't remember that.

Q. Did you negotiate with them for mutual concessions on the question of priority?

A. I am quite sure we didn't.

Q. You have no clear recollection on that, or do you testify that you did not?

A. My impression is that we did not.

Q. You testified on direct examination that when your suitcase cover is closed with the bands 26 ap-

(Deposition of Emanuel J. Shoemaker.)

plied in retaining position, that the garment would be completely housed in the cover. Doesn't that depend upon the length of the garment?

A. It might, although various sizes of cases are made to carry longer or shorter garments.

Q. That is, for a long garment the case would have to be larger in order to have the garment completely housed? A. Yes. [165]

Q. Now, in the Winship structure about which you testified, that is also true, is it not?

A. Yes, except that I explained that for a garment of a given length my invention houses it completely in the cover of a smaller case than would be possible in the Winship case.

Q. Then the advantage that you were intending to point out was that with the clothes support as designed by you, you could fold the garment a little more compactly than Winship could?

A. Yes.

Q. But if the garment were short, that is, short enough to be completely housed in the Winship structure, then there would be no difference in function between his device and yours, would there?

A. The method of packing would still be different.

Q. In what way?

A. In that Winship's would have to be inserted in the top or free end of the cover whereas mine can be fastened into the side adjacent the hinged end.

(Deposition of Emanuel J. Shoemaker.)

Q. In both cases the garment is folded over a removable rod, is it not? A. Yes.

Q. And after you have it folded you can put it into the cover or [166] any other box at either end or anywhere, can you not? A. In both cases?

Q. In both cases.

A. Speaking only of the rod?

Q. Yes.

A. Yes. The rod itself could be put anywhere.

Q. And it is merely a matter of choice where the rod is to be attached to the cover, is not that correct?

A. Choice and practicability.

Q. Well, it would be practicable, wouldn't it, to secure the rod in the Winship structure at any desired distance from the hinged end of the cover?

A. No, I don't think that that would produce the packing facility that my invention does.

Q. It would if the garment were short, would it not?

A. It might, but I still can't see it as a practical application.

Q. Well, what is the difference?

A. Well, the invention is for the purpose of carrying garments of any length and description, as is commonly done by people carrying luggage.

Q. You mean by that that Winship's structure as illustrated isn't as well adapted to carry a long garment? [167]

(Deposition of Emanuel J. Shoemaker.)

A. It is if the case is large enough; and one of the objects of my invention was to reduce the size of the case still retaining the hanging capacity.

Q. And that reduction was accomplished by providing for folding the garment very compactly, is that the idea? A. Yes.

Q. So that if the prior art disclosed any garment supporting device that would allow the garment to be folded as compactly as in your structure, that would completely meet the requirement, would it not?

Mr. Morsell: The question is objected to as calling for an opinion of the witness in regard to hypothetical construction of prior art.

Mr. Wheeler: The question is one of fact as to the meaning of the witness in the testimony which he has given.

A. I can't testify as to prior art. I can only interpret the invention as revealed by the patent in its claims.

Q. The question is as to whether, if you had a garment supporting member on which clothing could be packed as compactly as in your structure, would it serve the purpose just as well regardless of whether it was prior art or not?

A. It still depends upon the method by which that compact packing [168] is accomplished.

Q. Suppose it was accomplished in practically the same way, by draping the clothing over one end

(Deposition of Emanuel J. Shoemaker.)

of the support and then folding it over the other end? A. Wrapping it, you mean?

Q. Wrapping it or folding it just exactly as you fold it, so far as the folding operation is concerned.

A. Naturally if it were an exact duplicate of mine, the same result would be accomplished.

Q. No, I am not asking you whether in case it is an exact duplicate that the same result will be accomplished. I am asking you whether if you had a holder which would allow the same compact wrapping even though it was not an exact duplicate of yours, would that not be a full equivalent for the holder which you show?

A. I don't think I can answer that because I haven't seen a construction that would accomplish the same thing.

Q. Any frame of the same dimensions as the frame which you use and having bars at each end running transversely would allow clothes to be folded just as compactly as your frame allows them to be folded, is not that correct?

A. Yes, I suppose it would. [169]

Q. The frame does not have to be H-shaped, does it? A. No.

Q. And the question as to its length and width is wholly dependent upon the character of the garments intended to be folded on it? A. Yes.

Q. And the question as to where it is to be connected with a suitcase cover is purely a matter of

(Deposition of Emanuel J. Shoemaker.)

choice on the part of the person making the device, is not that true?

A. Repeat the question, please.

(Question read by reporter.)

A. Yes.

Q. So as I understand it, Winship chose to connect his clothes support intermediate to the ends of the cover and you chose to make connection near the hinged end of the cover, or at the hinged end of the cover?

A. You understand that we did choose that as against his choice?

Q. Yes.

A. Yes, but with a different construction of fixture.

Q. Did it make any difference whether the fixture, as you call it, is pivoted or is to be pivoted to the hinged wall of the cover or to the sidewalls?

A. For purposes of construction we favored the hinged side as being [170] more practical.

Q. Why was it more practical?

A. Because it was more adaptable to different constructions of luggage cases.

Q. Clothing less likely to catch?

A. No. The construction I refer to was the matter of the box, the foundation of the case itself, and how it was adapted to have a fixture fastened to it.

Q. Explain that a little further, as to just why you chose the hinged side of the cover?

(Deposition of Emanuel J. Shoemaker.)

A. Well, the base could be made of a material like wood and the rest might be soft leather.

Q. You mean the base of the cover?

A. I mean—yes, the hinged side of the cover.

Q. You refer to the hinged side of the cover as the base? A. Yes.

Q. And that was quite common, was it, to have the hinged side of wood and the other sides of leather? A. It is even today.

Q. And for that reason you preferred to connect it to the hinged side of the cover, that is, the wooden part, rather than the other walls? [171]

A. That was one consideration.

Q. Were there other considerations?

A. Well, we tried to make the adaptation of this I mention as practical as possible in order to allow it to be used in cases of various constructions.

Q. In the structure shown by Wheary, that was involved in the interference, the pivotal connection of the clothes supporting member was not made with the cover at all, was it?

A. No, I don't think it was.

Q. It was secured to the base, that is, brackets were secured to the base and arched over the hinged axis so as to be within the cover when the suitcase was folded? A. Yes, I believe it was.

Q. And you preferred to apply your hinged members directly to the hinged wall of the cover?

A. That was our preference.

(Deposition of Emanuel J. Shoemaker.)

Q. Do you think that was a decided advantage over the other methods of connection?

A. Yes.

Mr. Wheeler: Now, I have a few more questions but on a somewhat different line. Shall we adjourn until sometime this afternoon? [172]

Mr. Morsell: Yes.

(Whereupon an adjournment was taken at 12:05 P.M., until 1:15 o'clock P.M. of the same day) [173]

Milwaukee, Wisconsin,
Tuesday, October 10, 1939,
1:15 o'clock P. M.

The taking of depositions was resumed pursuant to adjournment last above noted.

All parties present.

E. J. SHOEMAKER,

resumed the stand, having been previously duly sworn, was examined and testified further as follows:

Cross Examination
(Cont'd)

By Mr. Wheeler:

Q. This morning you testified that the patent in suit had been of monetary value in the United States. Just what did you mean by that?

A. Well, for one thing, we receive license fees.

Q. How much?

(Deposition of Emanuel J. Shoemaker.)

A. Well, there are several arrangements. In the case of—

Q. State approximately what the total license fees thus far paid have been. A. Per year?

Q. Per year.

A. It is rather hard to give the total because I haven't the figures of at least two of them; but in one case it has been about a [174] thousand dollars a year.

Q. Have you granted licenses in Canada?

A. We have, although one case that I have in mind has run out; that firm is manufacturing something else now.

Q. You testified this morning that 150,000 of these suitcases have been sold in Canada. Does that refer to the complete suitcase or to the attachment?

A. Oh, to the complete suitcase.

Q. And does the plaintiff manufacture the complete suitcases or the attachments?

A. The complete suitcases.

Q. And plaintiff has extensively advertised those suitcases, has it? A. It has.

Q. During the whole period since the patent was granted? A. Yes.

Q. You testified that Vogue Luggage Company and Triangle Luggage Company had applied for licenses. Have licenses been granted?

A. Not as yet.

Q. Are negotiations still pending?

A. Yes.

(Deposition of Emanuel J. Shoemaker.)

Q. What were the circumstances under which they applied for [175] licenses?

A. The result of the notices being sent out last spring.

Q. That is, they were under threat of suit?

A. Yes.

Q. Were they manufacturers of suitcases or fixtures, the metal parts?

A. In the one case they were manufacturers of suitcases, and in the other, of fixtures.

Q. Which is the manufacturer—

A. The latter. You had two names there.

Q. Vogue.

A. And Triangle. Vogue is suitcases, and Triangle is fixtures.

Q. Are they large concerns?

A. I think they are fairly large. I haven't details on them.

Q. What were your reasons for starting the first suits out on the Pacific Coast?

A. Well, that was pretty well in the hands of the attorneys. I suppose it was a case of starting at one end of the country and going through.

Q. Was it because the Balkan Company and the other defendants out there were small concerns unable to contest this litigation?

A. I don't think so. [176]

Q. Well, what is the fact about it? A. No.

Q. Are they large concerns?

(Deposition of Emanuel J. Shoemaker.)

A. I haven't their statement, either. I don't know in what category they would come, whether one would call them large or small.

Q. Do you know whether they are able to contest patent litigation financially?

A. I don't know that.

Q. Doesn't it seem a little strange that you should engage Milwaukee attorneys to conduct your litigation at such a distance?

A. I didn't consider it strange in view of the fact that it ultimately pertains to the whole of the United States.

Q. Do you know whether any of those concerns on the Pacific Coast manufacture the metal parts of their suitcases? A. I don't know.

Mr. Wheeler: I think that is all, Mr. Morsell.

Redirect Examination

By Mr. Morsell:

Q. In your cross-examination you said that prior to the development of your invention the only fixture equipped piece of hand luggage you were familiar with was the Winship case. Do you [177] wish to amplify this statement in any particular?

A. Well, the only fixture equipped case that I recall having known at the time was the Winship case. I also testified, I think, that there was a similar fixture on the market, particularly the one that had been shown us by the Milwaukee Stamping

(Deposition of Emanuel J. Shoemaker.)

Company, that was intended to be applied in the same way as Winship's fixture in a case.

Q. Was it not true that the term "Winship" was used rather loosely to refer to fixtures of that swing, U-frame type at the time, regardless of who the manufacturer of the fixture was?

A. Yes, I would say so.

Q. In your early dealings with Milwaukee Stamping Company, I presume they had a fixture which corresponded more or less to the characteristics of the Winship fixture, is that correct?

A. In a certain sense. My recollection is that Winship had a removable bar in his fixture, whereas what I recall having been shown me by the representative of Milwaukee Stamping did not have a removable bar, it was a continuous, flat, iron band.

Q. That removable bar in the Winship fixture, where was that located with reference to the fixture?

A. Well, it was at the extreme end of the U-shaped fixture. [178]

Q. Which end?

A. At the outer end, the part that swung out of the case, but the whole thing was applied near the free end of the case of the cover of the case.

Q. And that bar of the Winship fixture would always be positioned adjacent the free or outer end of the cover of the case? A. Yes.

Q. Now, referring to the frame you ordered from the Milwaukee Stamping Company. Did it

(Deposition of Emanuel J. Shoemaker.)

have associated with it a removable bar or hanger of any kind whatsoever? A. Not at all.

Q. In your negotiations with the Milwaukee Stamping Company for a fixture of this type, was there ever any suggestion made that a removable bar might be used with the inner end of the fixture?

A. No, and I didn't talk to them about the use I thought of making of the fixture that they made for me.

Q. You merely requested a standard U-frame fixture?

A. Yes; of the dimensions that I specified and said nothing as to where it was going to be used.

Q. On cross-examination your attention was directed to Fig. 10 of the drawings of your patent, and was further directed to a state- [179] ment in the specification indicating that the garment holding members 12 were not actually pivotally attached within the inner end of the cover. You were further asked to state whether or not there was any claim in your patent which would cover such a structure. I now ask you to refer to Claim 10 of your patent and state what the facts may be in regard thereto.

A. From reading that claim, I would say that it has a direct reference to the disclosure in Fig. 10.

Q. Does that claim require that the garment supporting member be pivotally attached to the hinged side of the cover? A. No.

(Deposition of Emanuel J. Shoemaker.)

Q. Now, refer to Fig. 7 of the drawings accompanying your patent, this illustration being of a modification of your invention and showing the fixture in unfolded position. When the fixture is loaded with garments and is folded into the cover of the case, where is the connection between the portion 16 and the arms 21 with relation to the cover?

A. The portion 16 is allowed by the arms 21 to drop to the position adjacent the hinged side of the cover.

Q. So in packed condition the portion 16 of the member 12 will then be within the inner end of the cover adjacent the hinged connection of the cover, is that correct? [180] A. Correct.

Q. And is that likewise true of the garment bar 30? A. Yes.

Q. How about the other end of the member 12? Where will this be? A. That is edge 23?

Q. Yes.

A. Will be in the part adjacent the free end of the cover.

Q. And that will be the end of the unit on which the garments are secondarily draped, is that correct? A. Correct.

Q. Now, refer to Fig. 10 of the drawings of your patent. Notwithstanding the fact that this illustrates a modification of the invention, wherein the fixture 12 is not actually pivotally connected within the cover, what have you to say as to the

(Deposition of Emanuel J. Shoemaker.)

location of the hanger end 30 of the fixture when the case is loaded?

A. It is still in the same position as is disclosed in any of the other figures or drawings, and it definitely carries the primary fold of the garment.

Q. Is it adjacent the hinged end of the cover?

A. Yes.

Q. And is the fixture entirely lodged and retained within the [181] cover of the case?

A. Yes.

Q. Is the rod 30 removably carried by the fixture 12? A. Yes.

Q. Now, assuming that there might be a hypothetical structure such as was alluded to by Mr. Wheeler in his cross-examination, wherein garments might be folded around some sort of a frame and the frame with garments wrapped thereabout, positioned into a box or case, would there be any limitations as to where that fixture could be placed in the case in this hypothetical structure?

A. No. I imagine that it could be placed anywhere in the case and therefore would have no connection with the piece of luggage such as we have designed in which the fixture—in which the garments are definitely housed in the cover leaving the body portion of the case free to be packed with other things without interference from the garments.

Q. Assuming a fixture of this hypothetical character was used in a pasteboard suit-box, such as

(Deposition of Emanuel J. Shoemaker.)

clothing stores or tailors use, where would that be placed in the box?

A. Well, my knowledge of boxes would indicate—of such suit-boxes, at least, would indicate that the fixture would be in the body. [182]

Q. And when so positioned, would that permit you to get access to the remainder of the body for packing miscellaneous articles of wearing apparel or traveling paraphernalia?

A. I should say not.

Q. Now, assuming that you had a box of that character with a loose garment frame in there and picked up the box, how would be the natural way in which you would carry that box?

A. Well, you would carry it under the arm.

Q. And would the box then be in its normal horizontal or flat condition, or would it have one longitudinal edge down?

A. Well, in the manner in which suit-boxes are ordinarily packed, I would say that the folding edge would then be on the short side of the case and that in picking up a suit-box held with the long edges parallel to the ground, your clothing would shift to the bottom of the case.

Q. You couldn't then carry this box in the normal manner without the danger of garments shifting on the packing device, is that correct?

A. Yes.

Q. And the result would be that when you

(Deposition of Emanuel J. Shoemaker.)

reached your destination and opened the box, your garments would be disheveled and mussed? [183]

A. Yes, and that is exactly what we try to avoid in the development of our piece of luggage. The piece of luggage, of course, has a handle to carry it by—ordinarily the suit-box hasn't. And there is no assurance that the box itself will be picked up or carried in proper relation to the contents.

Q. Now, have you ever seen or heard of, now or at any time, a device on which garments might be wrapped for packing in a box or case, which device had a removable hanger bar at the inner end of it? A. No.

Q. In your invention do you consider it of any importance that there is a certain relationship between the garment supporting member, the removable hanger, and the particular position in which both of these members are mounted in the cover of the case? A. Yes.

Q. Why is that of importance?

A. Well, the point has previously been made that the clothing is designed to be carried in a hanging or draped position when the case is being transported in the proper manner, such as being carried by the handle.

Q. Would it be true that this combination of parts gives you accessibility to the garments, ease in packing and unpacking? [184]

A. Oh, yes.

(Deposition of Emanuel J. Shoemaker.)

Q. Would you say that it gives you accessibility to the main body portion of the case at all times?

A. Yes, in packed position. We are talking now of the case being in packed position.

Q. In packing your case, a garment is first folded over a bar hanger and the hanger is mounted in the inner end of the cover and the garment then extends out over the body of the case, straight over the outer end of the frame, is that correct?

A. Or near the outer end of the frame, yes.

Q. Now, in what manner is the secondary fold in the garment accomplished

A. By bringing the folding edge 23 to the top edge or free end of the cover, in other words, from its horizontal to a vertical position.

Q. That is a natural and easy movement of the frame? A. Yes, it is.

Q. In other words, the transposition of the frame on its pivotal mounting from a horizontal position to the position in the cover, is that correct?

A. Yes.

Q. And that simple movement of the frame automatically gives you [185] the secondary fold in the garments? A. Yes.

Q. And also serves to position the garments within the cover? A. Yes.

Q. In the Interference involving your application for patent, and that of Wheary's, referred to in cross-examination, certain claims were suggested which were at one time added to your application.

(Deposition of Emanuel J. Shoemaker.)

Claim 13 has been referred to heretofore, and among other things, this claim says: "Means whereby the point of pivot of the garment carrying frame is disposed within the cover member when the garment carrying frame and the cover member are closed over the main section." Bearing that phrase in mind and attempting to recall the Wheary construction, please, state, if you can, just what construction Wheary had which permitted the application of the quoted phraseology of the claim.

A. Well, my recollection of that is that he had in mind a construction that was entirely disposed in the body of the case, whereas I had mine placed in the cover. That drawing you referred to this morning of Mr. Wheary's patent showed an extension of his brackets into it high enough out of the body so that they would be enclosed in the cover when the case was closed, [186] and his claim might be construed as interfering with mine at that time so that there was a difference made.

Q. As a matter of fact, Wheary's construction was one wherein the frame was pivotally secured to brackets and the brackets were mounted in the inner rim of the body of the case, but those brackets were offset in such a manner that when the case was closed the pivotal connections for the frame would then be within the inner end of the cover, is that correct?

A. Right.

Q. But the frame was actually mounted in the body of the case, is that correct? A. Yes.

(Deposition of Emanuel J. Shoemaker.)

Q. Now, as opposed to that arrangement, your frame was actually mounted in the cover of the case, is that correct? A. Yes.

Q. And was it your belief and understanding that that was the essential difference between the two structures involved in the Interference?

A. That is as I recall it.

Q. On cross-examination you were requested to compare the action of your frame with that of the Winship arrangement if you were only concerned with short garments. Regardless of the [187] length of the garments considered, is it a fact or is it not a fact that your structure will accommodate a garment within a smaller space than the Winship arrangement? A. Yes, it is.

Q. Now, in the Winship arrangement what was done if two or three dresses were to be carried?

A. All the dresses carried were draped over the one hanger rod.

Q. Would this make for inconvenience in removing certain of the garments?

A. Yes. All garments had to be removed from the case and from the rod in order to make a selection of the one desired.

Q. In your arrangement, how do you take care of a plural number of garments?

A. We provide for more than one hanger or hanger rod, each of which can carry a garment.

Q. Do you find support for that statement in the

(Deposition of Emanuel J. Shoemaker.)

specification of your patent? I refer you to lines 36 to 39 of page 3 of your specification.

A. Yes. The specification reads: "The stud 37 may be of such proportion as to accommodate and support a plurality of hanger rods 36."

Q. Now, in a structure utilizing a plurality of hanger rods or [188] bars, would it be possible to remove from the supporting means an inner hanger or bar without unduly disturbing the bars or hangers there above? A. Yes.

Q. And without unduly disturbing the garments?

A. Yes.

Q. In the Winship arrangement the bar on which garments are draped is at the outer or free end of the frame, is that true?

A. Frame or—

Q. (Interposing) Fixture? A. Yes.

Q. Have you ever seen it at any other part of the fixture? A. The Winship type of case?

Q. Yes. A. No.

Q. The idea in the Winship arrangement is to drape garments over a bar which is supported at the outer end of the fixture, is that correct?

A. Right.

Mr. Morsell: I think that is all.

Recross Examination

By Mr. Wheeler: [189]

Q. A few minutes ago you said that in Fig. 7 the portion 16 of the member 12 was in the vicinity

(Deposition of Emanuel J. Shoemaker.)

of the hinge when the fixture is folded into the cover. A. Yes.

Q. From what point or points was it supported?

A. From the free end of the cover; is that what you mean?

Q. Yes. That is, it was suspended from the free end of the cover by the pivotal connections 22?

A. Yes, sir.

Q. And testifying as to the garment supports used in shipping boxes or in delivery boxes, you stated that such a frame as that could be carried anywhere in a suitcase. Is not that true of your fixture as shown in Fig. 10?

A. I described my fixture as being housed in the cover and held in with bands or something similar.

Q. But that same fixture could be put anywhere in the suitcase, could it not?

A. By itself it could.

Q. Just as readily as the fixture used in connection with a delivery box?

A. Yes, but that would not give the same facility for packing that was designed in this piece of luggage. [190]

Q. Now, suppose that the user who had a suitcase containing fixtures as shown in Fig. 10, should place the fixture in an inverted position within the cover. Would you say that such a structure is still within the scope of your invention?

(Deposition of Emanuel J. Shoemaker.)

A. It would not be carrying out the purpose of the invention.

Q. No, but it would be the same thing inverted; and suppose that a suitcase were being used in that manner, would you say that that was an infringement?

Mr. Morsell: The question is objected to on the ground of calling for a conclusion of law.

A. I couldn't say.

Mr. Wheeler: No more of a conclusion than the witness has already testified to.

Q. Your answer is "I couldn't say"?

A. I couldn't say.

Q. Would you regard it as carrying out the spirit and purpose that you had in mind when you made your invention? A. No.

Q. Would you regard it as in any way equivalent for what you describe and claim in your patent?

A. I don't know that I could put any interpretation on that myself.

Q. Now, in testifying as to the Wheary structure, you stated that [191] the difference between the Wheary structure and yours was that Wheary's brackets were located in the body and yours were located on the hinged side of the cover. The difference, then, is merely a question of where the connecting brackets are located, isn't it?

A. Yes, as well as the operation of the fixture on the basis of that location.

Q. Well, wasn't the operation the same?

(Deposition of Emanuel J. Shoemaker.)

A. The Wheary fixture would be horizontal over the body portion of the case when ready to close the cover and would prevent access to the other garments, or rather, access to the contents of the body; whereas my construction definitely puts the garments in the lid away from everything packed in the body.

Q. Doesn't your specification describe specifically that your member 12 can be swung downwardly to a position where it substantially covers the body?

A. When packing.

Q. And isn't that true of Wheary's?

A. Yes, when packing; but also when packed.

A. Well, when Wheary's garments are packed on his frame and the frame lifted up into the cover, it can be swung into the cover [192] the same as yours, can it not?

A. Well, partially. It wouldn't go right into the cover.

Q. Doesn't it swing entirely into the cover?

A. I don't think it does.

Q. What part of it projects out of the cover?

A. Well, the whole fixture is not entirely housed in the cover.

Q. Don't the brackets extend into the cover?

A. My impression is that they were not extended far enough to do that.

Q. The swinging end of the garment support when raised would swing back into the cover until

(Deposition of Emanuel J. Shoemaker.)

it struck the back side or what is the top side when the suitcase is closed? A. It might.

Q. Well, wouldn't it necessarily do that?

A. Without any retaining force, yes.

Q. It would naturally swing back there?

A. Yes.

Q. And assuming that the brackets do extend across the hinge line of the cover, then the entire frame, entire clothes supporting member, would be inside of the cover, wouldn't it?

A. Depending on the length of those brackets, it possibly would be entirely in the cover. [193]

Q. And the essential difference between the Wheary structure and yours is a question of where the brackets are mounted, whether they are mounted in the cover or whether they are mounted in the body?

A. Yes. But, as I also tried to say before, the Wheary fixture, with its garments on it, will have to be brought down horizontally over the body before the lid can be closed.

Q. Are you sure about that?

A. I am quite sure of that.

Q. Suppose the body were raised to the cover instead of the cover being swung down on to the body?

A. That might be done, but it is not a practical way of packing.

Q. Suppose also that Wheary had used the cross bands or straps corresponding to your straps 26

(Deposition of Emanuel J. Shoemaker.)

and 27, then couldn't the cover be swung down over the body without having the clothing drop out?

A. His construction never provided for that, and I don't know whether it could be done.

Q. That is, you mean that no straps are shown in his construction?

A. The straps that he used, if any, were fastened to the fixture itself in order to hold the clothing in order on the fixture.

Q. Well, straps such as your strap 26 were in common use in suit- [194] cases for many years, were they not, prior to your invention?

A. Not for a similar purpose.

Q. Well, for the purpose of retaining packed material in the cover, preventing it from falling out.

A. In certain forms that is probably true.

Q. It was very common, was it not?

A. Yes.

Q. Then if Wheary saw fit to make use of such straps in accord with common practice where retaining means are needed, prior art taught him fully how to do it, did it not?

A. He would then be fastening into the lid something that originates in the body, which would hardly have been done previously.

Q. Well, can you say that it originates in the body when it is intended by the shape of the brackets to support that frame inside of the cover?

A. I would interpret it so.

(Deposition of Emanuel J. Shoemaker.)

Q. Now, in the Winship structure you stated that the garment, a short garment, would not be held in the same position when the suitcase is normally carried. Would not the garment be suspended from his fixture when the suitcase is normally carried?

A. Suspended from his fixture in the free end of the lid, it would. [195]

Q. Yes, and would hang vertically when the suitcase is normally carried, would it not?

A. Correct.

Q. In the Wheary structure a garment draped over Wheary's swinging clothes support with one end hanging over what we call the front end of the body, if that clothes support were raised and swung into the cover the part of the clothing which was hanging over the front or handle end of the body would naturally swing to a vertical position or assume a vertical position as the frame was swung into the cover, would it not?

A. When the case is closed?

Q. When the frame, Wheary's frame, is swung upwardly into the cover.

A. It would assume a vertical position?

Q. Yes. A. Yes.

Q. And therefore if Wheary swings his frame to a horizontal position and drapes the garment on it just as you do, as described in your patent, and then swings that frame upwardly into the cover, the garment drapes, the hanging portion of the garment drapes over that frame exactly as occurs when

(Deposition of Emanuel J. Shoemaker.)

you swing your member 12 up into the cover, is not that true? [196] A. It could, yes.

Q. Well, it would, would it not?

A. As I picture it, the fact that his fixture is anchored in the body, in spite of those brackets reaching up into the lid, provides a limitation in the extension of that into the lid, of the packed fixture into the lid.

Q. You are not answering my question. My question is whether the part of the garment which hangs over the handle end of the body when Wheary places a garment on his fixture preparatory to packing it, whether that hanging portion of the garment will not fold and drop by gravity parallel with the other portion of the garment as soon as Wheary raises his fixture into the cover?

A. Yes.

Q. It would? A. Yes.

Q. Then there is no difference in that regard between Wheary's structure and yours?

A. Not in that regard.

Mr. Wheeler: I think that is all, Mr. Morsell.

Mr. Morsell: That is all, Mr. Shoemaker.

(Witness excused.)

EMANUEL J. SHOEMAKER

[197]

A. A. RITTER,

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows pursuant to questions propounded by C. B. Morsell:

Direct Examination

By Mr. Morsell:

Q. Please state your name, age, residence and occupation.

A. Name, Alois A. Ritter; age, 51.

Q. Residence.

A. Residence, 712 Russet Street, Racine, Wisconsin.

Q. Occupation.

A. Occupation, factory manager.

Q. Factory manager of what company?

A. Hartmann Trunk Company.

Q. Where is the Hartmann Trunk Company located and what business is it engaged in?

A. They are located in Racine, Wisconsin and their business is manufacturing trunks and luggage.

Q. Will you give us a little of the details of your particular line of duties with Hartmann Trunk Company?

A. I have full charge of the plant, plant equipment and manufacturing specifications. I take care of patent matters and all special work. [198]

Q. How long have you been connected with the Hartmann Trunk Company?

A. For thirty-six years.

(Deposition of A. A. Ritter.)

Q. In the general course of your duties with the company do you come in contact with patents frequently and attend to patent matters and development?

A. Yes, I do. I have been handling the patent matters for the past 17 years.

Q. Please explain a little more in detail as to your duties in connection with patents, the patent policy you pursue and some of the things you do in that connection.

A. Any new ideas we have I make a complete record of the inventions, such as date of conception, and take care of the filing of the application with the attorneys, and any complaints we have from our dealers or salesmen in their territories and cities regarding any competitive cases that appeared to be similar to ours, why, the matter is handled by me.

Q. Do you keep in touch with new developments in the art?

A. Yes, I do. I check the Official Patent Gazette for any patents that are issued pertaining to trunks and luggage and send for copies, and I usually read over the claims in a general way and classify them and file them for future reference. [199]

Q. In this connection, then, you have experience in looking over patents in your art from time to time?

A. Yes, I have.

Q. You don't purport to be an expert in the construction of claims or that sort of thing?

A. No, I do not.

(Deposition of A. A. Ritter.)

Q. I show you a copy of Shoemaker Patent, in evidence in these cases as Plaintiff's Exhibit 1, said patent being dated September 20, 1932, and being entitled "Hand Luggage." Please state whether or not you have ever seen this patent heretofore and state your previous familiarity with the patent, if any.

A. I have seen a copy of this patent, shortly after it was issued.

Q. Did you know anything about this invention before the issuance of the patent?

A. I knew of a patent pending to Mr. Shoemaker because at that time we were involved in an Interference case with this patent, and others, and we withdrew from the Interference, that is, we withdrew certain claims in our patent that were declared in the Interference.

Q. What does Hartmann Trunk Company manufacture and sell principally?

A. Manufacture wardrobe trunks, wardrobe luggage, and all accessory luggage. [200]

Q. The Hartmann Trunk Company has been in existence for sometime?

A. They have been in existence for over 62 years.

Q. What is the extent of its business?

A. Their product is sold through the leading department stores and luggage shops in the principal cities of the United States, and also some foreign export business in certain countries.

(Deposition of A. A. Ritter.)

Q. How does your hand luggage business compare with the rest of your business at the present time?

A. Well, the hand luggage is a larger business than our trunk business. I would say possibly 60 per cent of our business is in the hand luggage.

Q. Do the items of hand luggage manufactured and sold by the Hartmann Trunk Company include fixtures for the convenient and effective packing and folding of garments?

A. Some of the types of luggage do have fixtures.

Q. Now, is it not a fact that with respect of your various items of hand luggage you have certain lines, that is to say, there are a number of cases that go to make up a line, as for instance, a lady's wardrobe case, and then an over-night case, and different sized cases that make up a particular line?

A. Yes. Practically all our lines are made up in groups, that is, [201] the cases with the wardrobe fixtures are the key numbers and, of course, there are cases without fixtures that are accessory luggage to match.

Q. The wardrobe case in each group is the leader of that group, is that correct?

A. Yes. If a wardrobe case was not made in the group you might as well drop the rest of it because it would not sell.

Q. The other items of the group wouldn't sell if you didn't have a matching wardrobe case to go

(Deposition of A. A. Ritter.)

with it, is that correct? A. That is correct.

Q. Can you produce one of Hartmann Trunk Company's current catalogs and refer therein to disclosures of various items of wardrobe hand luggage? A. Yes.

Q. Please do so.

Mr. Wheeler: Are you going to have duplicates of that?

Mr. Morsell: Yes, we can have duplicates of that, Mr. Wheeler.

Mr. Wheeler: I would like to get them.

A. On page 6 there are the various types of luggage we manufacture, and on all the other pages are the groups showing the different [202] coverings and equipment.

Q. Please refer to the showing on page 6 and identify some of the fixture equipped items by name.

A. There is an item called the "Trip Robe", the "Skyrobe", "2-suit Bondstreeter", "3-suit Bondstreeter", and "2-suit Knocabout."

Mr. Morsell:

Q. After you learned of the Shoemaker patent in suit, what steps, if any, were taken by officials of your company looking toward the securement of a license to manufacture and sell under the Shoemaker United States Patent?

A. The Shoemaker Patent was under discussion with our officials in 1933 and '34 and it was finally

(Deposition of A. A. Ritter.)

decided to take the matter up with The L. McBrine Company regarding license, and Mr. Sand, our president, went to Kitchener, at Ontario, Canada, in 1934, and a license was agreed upon.

Q. Has your company been operating under this license ever since?

A. Yes; since January 1st, 1935.

Q. Now, did the officials of The L. McBrine Company approach you in regard to this license or did the Hartmann Trunk Company voluntarily approach The L. McBrine Company?

A. The Hartmann Trunk Company voluntarily approached The L. McBrine Company. [203]

Q. Do you know whether or not the company pays a substantial amount of money each year to The L. McBrine Company for the privilege of having this license? A. Yes, they do.

Q. Now, will you please refer to the Hartmann catalog and point out any of the items therein which are manufactured and sold under your license under the Shoemaker Patent in suit?

A. All of the items of luggage known as "Skyrobe" and also the "3-suit Bondstreater." Will you please repeat the question?

(Question read by reporter.)

A. I mentioned the "Skyrobe" and the "3-suit Bondstreater" are manufactured under the license of the Shoemaker Patent.

Mr. Morsell: The Hartmann catalog referred to by the witness is offered in evidence as Plaintiff's Exhibit 3.

(Deposition of A. A. Ritter.)

Q. Now, with respect to the pieces of luggage that are made and sold under your license under the Shoemaker Patent in suit, how are they marked with respect to patent numbers?

A. They have a patent label sewed into the lining of the case on which appear all of our luggage patent numbers and dates.

Q. With respect to the items which you manufacture under this license, do these tags include the number of the Shoemaker [204] Patent?

A. Yes, they do.

Q. Can you produce one of these marking tags?

A. Yes.

(Handed to counsel)

Q. Please point out on the tag the reference to the Shoemaker Patent in suit.

A. The second item, "No. 1,878,989, September 20, 1932," indicates the Shoemaker Patent.

Mr. Morsell: The patent marking tag referred to by the witness is offered in evidence as Plaintiff's Exhibit 4.

(Said marking tag marked Plaintiff's Exhibit 4.)

Q. Now, as to the cases of hand luggage manufactured and sold by your company under the Shoemaker Patent license, please state where and to what extent these items of luggage are sold.

A. They are sold through our dealers in all of the principal cities of the United States and also export in certain countries.

(Deposition of A. A. Ritter.)

Q. Can you name a few of your representative dealers?

A. Yes. Saks, Fifth Avenue, New York; Filene's, in Boston; John Wannamaker in Philadelphia; Marshall Field in Chicago; Neiman-Marcus, Dallas, Texas; Bullocks and I. Magnin & Co. on the Pacific Coast.

Q. Referring again to these patent labels which your luggage bears, [205] including the Shoemaker Patent, can you state whether or not luggage manufactured and sold by your company bore these labels for sometime prior to July, 1939, when the Bills of Complaint in the instant suits were filed?

A. Yes. Shoemaker Patent number and date appeared on these patent tags a short time after license was granted.

Q. But you can state definitely that many items of luggage went out of your shop with these tags on long prior to July, 1939? A. Yes.

Q. Are the items of wardrobe hand luggage which you manufacture and sell under the Shoemaker Patent license well received by the purchasing public?

A. Yes, and that is proven by it being handled by the leading stores in the country.

Q. Do you get repeat orders on these items?

A. Yes.

Q. Are they effective and practical in the packing of garments?

(Deposition of A. A. Ritter.)

A. Yes, they are very practical for their simplicity and easy operations and compactness in packing.

Q. Can you produce a man's hand luggage case manufactured by your company under the Shoemaker Patent? A. Yes. [206]

Mr. Wheeler: "A man's," you mean for men's clothing?

Mr. Morsell: Yes. The luggage case produced by the witness is offered in evidence as Plaintiff's Exhibit 5.

(Said luggage case marked Plaintiff's Exhibit 5.)

Q. Please refer to this case and describe the features of the fixtures incorporated therein and the manner in which they operate in the folding and packing of garments.

A. The fixture unit consists of a garment supporting frame and a garment carrying means attached to the supporting member at the hinged end thereof.

Q. To make the answer a little clearer on the record, the garment supporting means you refer to in this particular case is a frame, is that correct?

A. That is correct.

Q. And the garment supporting member you refer to is a hanger, is that correct?

A. A hanger.

Q. Where and how is this frame member mounted in the case?

(Deposition of A. A. Ritter.)

A. The frame member is hingedly connected adjacent the hinged section of the case in the cover portion.

Q. Where is the hanger mounted?

A. The hanger is mounted on the lower cross member of the garment [207] supporting frame.

Q. Is the hanger at the inner end of the frame?

A. Yes.

Q. Is it adjacent the hinge connection of the cover of the case with the body of the case?

A. Yes.

Q. Is the hanger removable? A. Yes.

Q. Now, please describe the manner in which you would pack a garment with this fixture.

A. The first operation would be to move the garment supporting member down over the body section. Next, remove the hanger and place the suit on it, then engage the hanger into the fixture frame which drapes the coat over the garment supporting member, and then moving the garment supporting member into packed position into the cover of the case, thereby folding the suit over the folding edge of the garment supporting member.

Q. Is there a means in this device for retaining the frame or fixture within the cover of the case?

A. Yes. There are two small spring catches on the ends of the cover section.

Q. And when the fixture is moved into the cover of the case, is the [208] suit completely housed within the cover of the case?

(Deposition of A. A. Ritter.)

A. Yes, and a retainer curtain is placed over the garments holding them in position.

Q. Now, can you produce a lady's hand luggage case manufactured by your company under its license under the Shoemaker Patent? A. Yes.

Q. Will you please produce that case.

Mr. Morsell: The lady's hand luggage case produced by the witness is offered in evidence as Plaintiff's Exhibit 6.

(Said lady's hand luggage case marked Plaintiff's Exhibit 6.)

Q. Now, please refer to this case and describe the fixtures incorporated therein for the folding and packing of lady's garments.

A. The fixture consists of a garment supporting member and is hingedly connected adjacent the hinged section of the case, and it has a garment supporting means, or garment carrying means, mounted at the hinge connections of the garment supporting member with removable hanger rods.

Q. Now, are there more than one removable hanger rods? A. Yes. There are four of them.

Q. It will then accommodate a plurality of ladies' dresses or garments? [209] A. Yes.

Q. And these hanger rods are mounted adjacent the hinged or pivotal connection of the folding frame or unit? A. Yes.

Q. Please describe briefly the manner in which garments are packed with this fixture.

(Deposition of A. A. Ritter.)

A. The hanger rods are removed from the fixture and the garment supporting frame is lowered into packing position, that is, over the body section of the case. The dresses or garments are draped over the hanger stick and then engaged into the fixture, thereby draping the dresses over the garment supporting member.

Q. When the garment supporting member is swung into the cover, what happens to the dresses or garments?

A. The dresses or garments fold over the closed end of the garment supporting frame.

Q. Do the bars provide means for primarily folding the garments? A. Yes.

Q. And the secondary fold is accomplished by the swinging movement of the frame or unit?

A. Yes.

Q. Does this case have means for retaining the fixture and the gar- [210] ments thereon within the cover section of the case?

A. Yes. It has a curtain retaining means.

Q. When this fixture is loaded with garments, what have you to say as to the accessibility to the body portion of the suitcase?

A. There is free accessibility to the body section of the case as the garments are packed entirely in the cover section.

Q. Is that likewise true of the man's case, Plaintiff's Exhibit 5? A. Yes.

(Deposition of A. A. Ritter.)

Q. If any of the features of the fixtures incorporated in these several luggage cases have any particular points of advantage or sales arguments, please mention the same briefly.

A. The main feature of the fixtures in these cases is the simplicity of operation and carrying of the garments in such a way as to eliminate sharp creases and wrinkles.

Q. Do the fixtures move and do they carry the garments without pinching or crushing delicate ladies' garments? A. Yes.

Q. How is the relationship of the garments in the packed case to the manner in which the case is normally carried?

A. The garments are carried by the garment supporting member when the case is in carrying position, that is, with the handle uppermost. [211]

Q. Do you find that these fixtures permit you to confine maximum length dresses and garments within a minimum of space, that is to say, can you make your cases rather compact? A. Yes.

Q. And with small dimensions?

A. It allows us to bring them down to a reasonable dimension and easy to carry and small in size, which is quite necessary, particularly so in women's luggage.

Q. Have you knowledge of the number of cases which your company has manufactured and sold employing the feature of the Shoemaker Patent to date?

(Deposition of A. A. Ritter.)

A. I would say we have manufactured over 1200 of the men's cases and approximately 69,000 of the ladies' cases.

Mr. Morsell: I offer in evidence for identification in the suit entitled *McBrine versus Koch, et al*, a wardrobe suitcase entitled "Koch's Luggage", which the reporter is requested to mark for the purposes of identification Plaintiff's Exhibit 7.

(Said wardrobe suitcase marked for identification in the suit entitled *McBrine versus Koch, et al*, Plaintiff's Exhibit 7.)

Q. I would now like to direct the witness's attention to this [212] Koch case. Please refer to this case and to the fixtures therein and describe the manner in which garments are packed and retained in position in this case.

A. The garments or dresses are hung on the hanger rods and placed in the fixture with the dresses draped over the bar on the outer end of the garment supporting member and then moved into the packed position in the cover section and held in place by spring catches, also a curtain retaining means, to hold the dresses in the cover of the case.

Q. How does the mode of packing and the retention of garments with the fixtures of this case compare, if it does compare, with your lady's case, Plaintiff's Exhibit 6, or with the mode of packing exemplified in the Shoemaker Patent in suit?

A. The method of packing in this case is the same as the Hartmann "Skyrobe" known as Ex-

(Deposition of A. A. Ritter.)

hibit 6, and Fig. 1 shown in the Shoemaker Patent, except that the drawing shown in Fig. 1 of the Shoemaker Patent shows a wood constructed garment supporting frame.

Q. Does the fixture of the Koch case have a garment supporting member having a free end about which garments are secondarily folded?

A. Yes. [213]

Q. Does it have one or more hanger bars about which garments are primarily folded?

A. Yes.

Q. Is the swinging unit pivotally mounted within the hinged end of the cover of the case?

A. Yes.

Q. When the case is loaded and the fixtures in condition to be swung into the cover, and also when the fixture is in the cover, are the removable hangers located adjacent the hinge connection of the cover with the body? A. Yes.

Q. I observe that this particular fixture has, in addition, an extension which can be moved to a vertical position when the fixture is moved over the body of the case for packing purposes. What have you to say as to this detail?

A. This is merely additional and the case can be packed with the fixture in a vertical position or in the horizontal position.

Q. At all events, when the case is packed and when the fixture is utilized for the folding and car-

(Deposition of A. A. Ritter.)

rying of garments, what is the relationship of the removable hangers to the other parts of the assembly?

A. Will you repeat that, please? [214]

(Question read by reporter.)

Q. In other words, where are they located?

A. They are located adjacent the hinged connection of the case and attached in the slides of the garment carrying means.

Q. So that when this fixture is functioning as a carrying unit within a packed case, the fixture, the entire fixture, is lodged within the cover of the case and the individual removable hanger bars are always positioned at the inner end of the cover adjacent the hinged connection of the cover with the body, is that correct?

A. That is correct.

Q. Now, when that case is packed and carried, what position do the draped garments assume relative to the handle end of the case?

A. The draped garments are in a vertical position and carried by the garment supporting member, that is, with the handle of the case in the uppermost position.

Q. Do you see any advantage in having the individual hanger bars removable? A. Yes.

Q. What is that advantage?

A. It would be very difficult to drape the dresses on the garment [215] rod if they were not removable.

(Deposition of A. A. Ritter.)

Q. Please refer to Claim 25 of the Shoemaker Patent in suit and compare the same, element for element, with the Koch structure before you.

A. Claim 25 reads: "Luggage comprising a body portion, a cover portion hingedly carried by said body portion."

Q. Do you find both of those elements in the Koch case? A. Yes.

Q. And the cover is hingedly connected to the body? A. Yes.

Q. Go on.

A. The claim reads further: "A garment supporting member hingedly carried in said luggage."

Q. What is the equivalent element in the Koch case?

A. I find that the garment supporting member is hingedly carried in this particular piece of luggage.

Q. In this Koch luggage, is that member the frame with the wooden bar at its outer end?

A. Yes.

Q. And that is hingedly mounted, at its inner end, to the cover of the case? A. Yes. [216]

Q. Adjacent the inner end of the cover?

A. Correct.

Q. Go on.

A. And reading further, the claim states: "and a hanger rod removably carried adjacent the hinge connection of said body portion and said cover portion."

(Deposition of A. A. Ritter.)

Q. What is the situation of the Koch luggage with reference to that last element?

A. The hanger rods are removably carried adjacent the hinge connection of the body portion and cover section, except the claim reads "hanger rod," whereas the fixture in the Koch case has four hanger rods.

Mr. Morsell: In the suit entitled "McBrine versus Sol Silverman, et al, doing business under the name and style of Balkan Trunk And Suitcase Co., I wish to offer in evidence for identification——

Mr. Wheeler: I wish you would take the testimony about it before you offer it in evidence. Have it marked for identification.

Mr. Morsell: I wish to have marked for identification as Plaintiff's Exhibit 8, a suitcase, this case bearing a tag or name-plate reading, "Balkan Aero-Light Luggage." [217]

(Said suitcase bearing the tag or name-plate "Balkan Aero-Light Luggage", marked for the purposes of identification Plaintiff's Exhibit 8.)

Q. I direct your attention to this Balkan case and would ask you to examine the same and describe the fixture therein and the manner in which it operates.

A. I find this fixture has a garment supporting frame hingedly connected in the cover of the case adjacent the hinged section of the body and cover;

(Deposition of A. A. Ritter.)

also a garment carrying means with removable hanger rods.

Q. Please describe the manner in which a lady's dress would be packed in the case with the fixture incorporated therein.

A. The dress or garment is folded over the hanger stick and then placed into the garment carrying means, and the garment supporting member is moved into packed position into the cover of the case and held in place by spring catches and an elastic strap. It also has a retainer curtain to hold the garments in packed position. The garments are packed entirely in the cover section of the case.

Q. Does the frame about which garments are secondarily folded have an extension which may or may not be projected to a vertical position for packing operations? [218]

A. Yes, it has a means of extending a section of the garment supporting frame into a vertical position.

Q. Can the case be packed either with the extension in a vertical position or with the extension in a horizontal position? A. Yes.

Q. In the latter event, meaning the horizontal position, where are the individual hangers located?

A. They are located adjacent the hinge connection of the case and near the hinge connections of the garment supporting frame.

Q. Are those individual hangers removable?

A. Yes.

(Deposition of A. A. Ritter.)

Q. Are they removable in either position of the extension arms? A. Yes.

Q. When the case is packed and the fixture is located in the cover of the case, are the garments entirely confined within the cover? A. Yes.

Q. Where are the individual hanger rods then located?

A. They are located adjacent the hinge connection of the body and cover section of the case.

Q. The garments are primarily folded on the hanger rods? A. Yes. [219]

Q. And secondarily folded on the outer end of the frame? A. Yes.

Q. Will you please apply Claim 25 of the Shoemaker Patent in suit to this Balkan case?

A. Claim 25 reads: "Luggage comprising a body portion; a cover portion hingedly carried by said body portion," which I find is the construction of the case in question. The claim reads further: "a garment supporting member hingedly carried in said luggage." I find the garment supporting member is hingedly carried in this case.

Q. Is that garment supporting member the frame and the extension arms included in the frame? A. Yes.

Q. That comprises the garment supporting member? A. Yes.

Q. Go on.

A. "and a hanger rod removably carried adjacent the hinged connection of said body portion

(Deposition of A. A. Ritter.)

and said cover portion," which in this case is the same as the claim reads.

Mr. Morsell: The case about which the witness has just testified, the Balkan Aero-Light Case," is offered in evidence in the suit of McBrine versus Silverman, et al, as [220] Plaintiff's Exhibit 8.

Mr. Wheeler: The exhibit is objected to as incompetent to show infringement. [221]

Q. Have you any familiarity with a form of wardrobe case or fixture equipped case known as the Winship case? A. Yes.

Q. How long have you *know* of that type of case? [223] A. I would say about ten years.

Q. Can you describe the form of the fixture utilized in that type of case?

A. The fixture in the Winship case was a garment supporting frame mounted in the free end of the cover section and the mounting was pivotal so the fixture could be extended out of the case making it more convenient for packing. Also, it had one garment rod that was stationary and permanently attached to the garment carrying frame.

Q. Where was that rod with reference to the frame, at the outer end of the frame or at the inner, hinged edge of the frame?

A. At the outer end of the frame.

Q. In those Winship arrangements, did the frame ever swing down flatly over the body of the case? A. No.

Q. What length were the arms of the frames in those cases?

(Deposition of A. A. Ritter.)

A. I would say about four or five inches.

Q. How was it contemplated that garments be held on those frames?

A. The garments were folded in the center and draped over the bar and extended into the body section of the case.

Q. Did those fixtures automatically give you double or compound folding of the garments? [224]

A. Only double folding of the garments.

Q. It didn't provide for a primary folding and an automatic secondary folding or draping, did it?

A. No.

Q. Did those fixtures ever, to your knowledge, have individual hanger members removably associated with the inner ends of the frames?

A. No.

Q. Do you know what were the requirements for the sizes of cases in which those types of fixtures were mounted?

A. The Winship fixture functions similar to fixtures known as trolleys, with folding side arms, and that type of fixture was installed in cases that had a length of 29 inches and more; whereas the Winship case was made with a length of about 18 inches.

Q. In the Winship type of case, if the garments were at all long, would they drape into the body portion of the case? A. Yes.

Q. Did the Winship device contemplate that the garments should so drape? A. Yes.

(Deposition of A. A. Ritter.)

Q. Was provision made for that? [225]

A. They had a partitioned well in the back of the body section of the case and in some instances this was removable so that longer dresses could be hung in the case.

Q. And in that event the dresses would have to be extended down into the well in the back of the body of the case and then laid flatwise and extended forwardly in the bottom?

A. That is correct.

Q. With the Winship type of case and fixture, could you provide a practical case of limited dimensions, comparing the dimensions with your present "Skyrobe", for instance? A. No.

Q. What would the result be in dimensions?

A. The case would necessarily have to be made of an extreme width that might be very inconvenient for a woman to carry.

Q. In other words, the lengthwise dimension of the cover would have to be considerably greater than in your present "Skyrobe", is that true?

A. Yes. That is, the dimensions from the free end to the hinged end of the cover section.

Q. Yes. And in your present "Skyrobe" structure you can get that relatively short cover dimension by virtue of the utilization of the Shoemaker fixture which gives you compound folding, is [226] that correct? A. That is correct.

Q. And that was not attainable with the Winship form of devices, is that correct?

A. That is correct.

(Deposition of A. A. Ritter.)

Q. Do you know whether the Winship form of case is being exploited to any extent today?

A. I doubt very much if it is being made, as I have not seen any of it on the market.

Q. Has it been supplanted by the compound folding fixtures? A. I believe so.

Q. Now, have you any familiarity with the patent issued to Wheary wherein a garment folding frame was mounted in sockets within the inner end portion of the body of the case? A. Yes.

Q. Is it correct that the frame in that structure, that is, the fixture frame, was pivoted at its inner end to brackets and those brackets are mounted in sockets in the inner end of the body of the case?

A. Yes.

Q. And is it correct that those brackets had rearwardly curved extensions directed toward the rear wall of the case? [227]

A. Yes. And that was done so that the fixture would come within the cover of the case when the case is closed.

Q. In designing luggage for the accommodation of lady's garments of frail fabrics, do you have to bear in mind the fact that these garments must be handled and retained in such a manner that they won't be damaged or creased or crushed or torn or pinched?

A. Yes, particularly so to keep them clean.

Q. Where you have a fixture in which an inner end portion has garments draped thereabout and which inner end portion is definitely on a shifting

(Deposition of A. A. Ritter.)

pivot, would there be any danger of pinching or rubbing or damaging the garments? A. Yes.

Q. Would you say that would be true of the Wheary structure we have just been discussing?

A. Yes.

Q. From a practical standpoint, in your own operations, would you find it more desirable to manufacture and exploit a case wherein the fixture was definitely located in the cover of the case?

A. Yes.

Q. Or a fixture which would shift its position from one part of [228] the case to another to relocate the hinge?

A. The fixture in the cover of the case is more practical because it always gives free access to the body section for other wearing apparel items.

Mr. Morsell: I believe that is all, Mr. Wheeler. You may cross-examine. [229]

Cross Examination

By Mr. Wheeler:

Q. Did you say that the Hartmann Trunk Company was involved in the Interference between Shoemaker and others at the time the Shoemaker application was pending? A. Yes.

Q. And before that withdrawing of the Interference counts, was there an investigation as to the priority of Wheary or the Hartmann line?

A. Yes.

Q. And did you come to the conclusion that Wheary was prior to Shoemaker and to the appli-

(Deposition of A. A. Ritter.)

cation that the Hartmann Trunk Company owned?

A. I don't just remember if it was Wheary. It was one of the applications. I think at that time there were four involved.

Q. And would you be able to identify the Interference counts by reference to the file history and to the claims of the Wheary Patent 179877?

A. No, I don't think I would be familiar with that.

Q. I will hand you the file history of the Shoemaker Patent and ask you to examine Claim 13, which is the first count of the Interference, as compared with Claim 8 of this Wheary patent.

A. Claim 8 of the Wheary Patent? [230]

A. Both claims read exactly alike.

Q. And the claims in Interference were allowed in the Wheary Patent? A. Yes.

Q. Now, in your testimony you stated that the Hartmann Trunk Company pays a substantial amount of money each year for their license?

A. Yes.

Q. How much money is paid each year?

A. According to our records, we have paid \$1,000 per year up to date.

Q. And is that computed on the basis of the number sold or is that a stipulated annual royalty?

A. No, it is computed on the number of pieces sold, with a minimum charge.

Q. How much is that minimum charge?

A. One thousand dollars.

(Deposition of A. A. Ritter.)

Q. How much is the royalty on each article sold?

A. Offhand I couldn't state just what the royalty is per piece.

Q. And the number of sales doesn't conform to the amount paid? A. I presume not.

Q. On the basis of the royalty per piece. Do you have an idea of about how much royalty is paid for each article? [231] A. No, I haven't.

Q. You said that you were selling 1200 men's cases and 69,000 ladies' cases to date? A. Yes.

Q. And you say that comes to less than a thousand dollars annual royalty?

Mr. Morsell: He didn't say less.

A. No, I didn't say less.

Mr. Wheeler: Q. Well, not more?

A. I said we paid a thousand dollars per year so far, because we didn't reach a certain figure.

Q. That is, computed on the basis of so much royalty apiece, this 69,000 of the ladies' cases, plus 1200 men's cases, would not amount to a thousand dollars?

A. I presume not, according to that figure. Of course, there will be an increase in the minimum rate effective January 1st, 1940. I don't know what the exact amount is and how often it steps up. I don't know exactly the details of their contract, agreement.

Q. Is the Hartmann Trunk Company financing this litigation in whole or in part? [232]

A. Not to my knowledge.

(Deposition of A. A. Ritter.)

Q. Is there a litigation agreement between Shoemaker and the Hartmann Trunk Company?

A. In respect to this litigation?

Q. Yes. A. Not that I know of.

Q. Do you know why the Pacific Coast men were picked out as defendants? A. No, I do not.

Q. Was the Hartmann Trunk Company making the Shoemaker device before it procured the license from Shoemaker?

A. Yes, I guess we were. That was the reason why we got a license.

Q. Were you then making a device like the exhibit that has been introduced here as representing the Hartmann structure?

A. Well, there may be—that is, I know there are improvements on this device over the devices we used prior to the license date.

Q. Were you closer to what is disclosed in the Shoemaker Patent at the time you took the license than you are now?

A. I would say about the same.

Q. Was the company threatened? A. No.

[233]

Q. Are a considerable number of the items listed in the catalog, Exhibit 3, handled by Wannamaker and the other customers that you mentioned in your direct testimony? A. Yes.

Q. The goods they handle, then, are not limited to the goods that are supposed to be under the Shoemaker Patent, are they? A. No.

(Deposition of A. A. Ritter.)

Q. And they sell large numbers of these other goods? A. Yes.

Q. In Plaintiff's Exhibit 5, is the garment supporting member pivoted to the hinged side of the cover or to the lateral side flanges of the cover?

A. I presume by the "side flanges" you mean the end sections of the cover section of the case?

A. Yes. The walls of the cover that extend from the hinged side to the swinging end. A. Yes.

Q. What is your answer?

A. The answer is that it pivots on the side walls you refer to.

Q. Yes. And that is true also of Exhibit 6?

Mr. Morsell: That is the "Skyrobe." [234]

A. Yes.

Mr. Wheeler: Q. And when the garment supporting frame or member is swung downwardly over the body in these exhibits, it does not extend into proximity of the handle end of the body, does it?

A. I don't understand the question.

Q. Isn't there about six inches of open space between the end of the swinging clothes supporting member and the handle end of the body?

A. You have reference to the distance here (Indicating suitcase) I would say approximately five inches. Excuse me, Mr. Wheeler. In this particular instance these are adjustable, in this particular case, but that isn't—

Q. The swinging draping bar is adjustably connected with the side bars of the frame? A. Yes.

(Deposition of A. A. Ritter.)

Q. When the bar is extended its greatest distance from the pivot, it still is quite a distance from the handle end of the body, is it not?

A. I would say about five inches.

Q. Prior to the year 1928 was it not customary to use removable hanger bars in clothes supporting fixtures?

A. Yes, but that was in the free end of the cover section of the [235] cases or in the body sections of the miniature type wardrobe trunks.

Q. But it was common practice to use a plurality of removable hanger bars in clothes supporting fixtures? A. Yes.

Q. Do you know who made the metal parts that appear in Plaintiff's Exhibit 8?

A. Yes. It is the Rite Way fixture manufactured by the Milwaukee Stamping Company, which is stamped right on the fixture.

Q. The Balkan Company abandoned that type of fixture long prior to the commencement of this suit, didn't they? A. I do not know.

Q. With that fixture in Plaintiff's Exhibit 8, can the garment be packed with the same facility when the clothes supporting member or frame is at a horizontal position as when it is in the raised or vertical position? A. Yes.

Q. Can any specific garment be removed and replaced with the same facility? A. Yes.

Q. Do you think that that fixture is intended to be used for packing and removing garments when

(Deposition of A. A. Ritter.)

the clothes supporting [236] member is in a horizontal position?

A. When it is in a horizontal position?

Q. Yes, instead of that raised position at the ends of the hinges.

A. Do you say it was intended?

Q. Yes.

A. That I wouldn't know, but it is easy to see that it can be used that way and might be used that way.

Q. What do you understand to be the object of mounting the clothes supporting frame upon the hinges so that that frame can be raised to a vertical position?

A. Well, in my opinion I would say that they had in mind that the garments could be hung in a vertical position while packing instead of laying them over the case engaging them into the garment carrying means.

Q. The hinges add to the expense of the fixture, do they not? A. They what?

Q. The hinges add to the expense of the fixture?

A. Yes.

Q. The hinges and the means for supporting the garment supporting member in the vertical position? A. Yes, they will add some. [237]

Q. And they would not be used unless it was assumed that the garments would be packed and removed with the supporting member in the vertical position? A. I couldn't say that.

(Deposition of A. A. Ritter.)

Q. Well, would your company go to the expense of putting in hinges if you didn't think they were going to be used? A. No, they wouldn't.

Q. And when the suitcase is closed, the hinges support the garment supporting member, do they not? A. Yes.

Q. In other words, the garment supporting member is suspended from the upper ends of the hinges?

A. Yes, but it is adjacent the hinge connections of the case.

Q. It is adjacent, but not on that hinged part of the cover? A. Yes.

Mr. Wheeler: That is all.

Redirect Examination

By Mr. Morsell:

Q. Mr. Ritter, if your company thought that a slight modification in the form of a fixture might help it to avoid some patent difficulty, then would your company feel that it would be justified in paying the increased price that the addition in [238] the fixture might incur? A. Yes.

Mr. Morsell: That is all.

Mr. Wheeler: That is all.

Mr. Morsell: That will be all, Mr. Ritter.

(Witness excused.)

(Which were all the proceedings had and testimony taken in the above entitled matter at said time.) [239]

In the Southern Division of the United States District Court, in and for the Northern District of California.

Before: Hon. Michael J. Roche, Judge.

Civil Action No. 21,271-R

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-
partners doing business under the name and
style of Balkan Trunk & Suitcase Co.,
Defendants,

Civil Action No. 21,273-R

THE L. McBRINE COMPANY, LIMITED,
Plaintiff,

vs.

HERMAN KOCH, doing business under the name
and style of H. Koch & Sons, and HAROLD
M. KOCH, WILLIAM L. KOCH and
REBECCA KOCH,
Defendants.

Tuesday, March 12, 1940.

Counsel Appearing:

For Plaintiff:

Curtis B. Morsell, Esq.,
John Hursh, Esq.

For Defendant Silverman, etc.:

J. E. Trabucco, Esq.,

L. C. Wheeler, Esq.

For Defendant Koch, etc.:

George B. White, Esq. [243]

Mr. Trabucco: In connection with the *McBrine v. Silverman* case, 21,271, I wish to associate Mr. L. C. Wheeler, of Milwaukee, as an attorney for the defendants.

Mr. Hursh: If the Court please, at this time I would like to move the admission for this case of Mr. Curtis B. Morsell, of Milwaukee. He is a member of the State Bar of Wisconsin, and is out here to try this case, or these two cases, before your Honor.

Mr. Trabucco: I make the same motion with respect to Mr. Wheeler. [244]

IRVING C. ROEMER,

Direct Examination

Mr. Morsell: Q. Mr. Roemer, will you please state your name, age, residence, and occupation?

A. My name is Irving C. Roemer; I am 35 years old; I reside in Oakland, California; I am occupied as a patent attorney.

Q. How long have you been engaged in patent work?

(Testimony of Irving C. Roemer.)

Mr. White: If your Honor please, we will stipulate to the qualifications of Mr. Roemer as a patent expert in the case. [259]

Mr. Morsell: Stipulate that Mr. Roemer is a patent expert and experienced in patent matters?

Mr. White: Yes.

Mr. Morsell: Q. Are you familiar with and have you studied the Shoemaker patent in suit No. 1,878,989? A. Yes, I have.

Q. Which is in evidence as Plaintiff's Exhibit 1?

A. Yes.

Q. Will you please explain the structure contemplated by the Shoemaker patent, and in so doing you may refer to any chart or charts which have been prepared to show in enlarged form several of the views in the patent drawings of the Shoemaker patent?

A. The Shoemaker patent No. 1,878,989 relates to hand luggage, and particularly to a fixture for arranging garments, or packing garments in the luggage. It relates especially to a device shown in the drawings on this chart.

Mr. Morsell: At this time, your Honor, I might identify that chart and offer it in evidence. I will ask the witness——

The Court: What is the next number?

Mr. Morsell: Q. Was this chart prepared from the drawings of the Shoemaker patent under your supervision?

A. Yes. This chart consists of enlargements taken from drawings of the patent.

(Testimony of Irving C. Roemer.)

Mr. Morsell: I offer the chart in evidence as Plaintiff's Exhibit 9.

(The chart was marked "Plaintiff's Exhibit 9.")

The Witness: This chart, which consists of enlarged photostats and copies of the drawings of the patent, I have added to these drawings certain colors and certain lines to be used in simplifying the designations of the several parts of the luggage. The Shoemaker patent relates to the fixture which is principally shown by the letter C, and colored in red on the chart, and the purpose of this fixture and associated parts which I will refer to in a [260] moment is to assist in hanging or arranging garments, particularly within the cover portion of the luggage, and in such a manner that when the luggage is being carried the garments are neatly draped according to the carrying position of the luggage; that is, the handle of the luggage would be at the upper portion of Fig. 4 when the luggage is closed, and the garment carried within the cover portion would be draped just as though it were hung over a rod or hanger in a clothes closet, and in that way creasing or mussing of the garment while being carried is avoided to the greatest possible extent.

The patent describes the fixture as having a folding member. That folding member is that shown at C, and colored in red in the drawing, and will probably be referred to as a frame, because it may be confusing, or confused with the folding means of the patent, which is colored in blue and designated

(Testimony of Irving C. Roemer.)

by the letter D. The folding means in the claims will probably be referred to as a hanger bar, or hanger.

Q. Mr. Roemer, you have been inadvertently, I believe, mentioned the folding means as being specified in the claim. May I direct your attention to the fact that the frame C has been designated in the claims as a garment-supporting member?

A. Yes.

Q. And Bar D has been designated as garment-supporting means. In order to clarify this discussion we might hereafter refer to the so-called garment-supporting member as the frame and the so-called garment-supporting means as the bar or hanger. Will you proceed, please?

A. There is a part colored brown and designated with the letter F, which is used to retain the form of—well, used to retain the supporting member, or the frame, within the cover member, and to retain the garment there when the luggage is in its packed condi- [261] tion.

The members marked G are little brackets, colored yellow, by means of which the bar or hanger D is secured in place.

In packing the garment the garment is draped over the hanger designated by the letter D, then placed in position in such a manner that it will lie over the frame, which at this time is horizontal, or stretched out over the open body of the suitcase. The bar D with the garment on it is snapped in place by the brackets G to which the frame is folded

(Testimony of Irving C. Roemer.)

in its packed condition, as illustrated in Fig. 4, within the cover member, and in being so folded the garment is caught approximately half way by the member marked E, which is a folding edge on the frame C, and this edge serves to carry the garment into position within the cover member, and also to brace it or place in it what is referred to as a secondary fold, the primary fold being made over the bar D.

Q. Do you find in the specification of the Shoemaker patent with reference to the claims involved in this litigation any limitation as to the shape or form which this so-called garment-supporting member or frame C may take in practical form?

A. No, none, whatsoever. The purpose of the member C is such that it must be connected at its inner end and have an edge at its outer end which is substantially parallel to the inner end, and it may be in a solid piece or a frame of any desired shape proper in luggage usually designed for lightness and strength.

Q. Will you explain the advantages of the invention recited in the Shoemaker patent specification and point out in the specification where you obtain support for the statements in this connection you may make?

A. Referring to page 1 of the Shoemaker patent, to the first paragraph, the inventor says that this invention relates to hand luggage, and more particularly to a means for packing [262] garments so that

(Testimony of Irving C. Roemer.)

they may be supported in upright position relative to the common manner in which luggage of this nature is carried.

I interpret that as meaning that the garments are packed and disposed in the luggage in such a manner that when it is carried they are properly hung or draped without any tendency to cause them to slide to one side and become wrinkled and mussed in transportation.

The patentee goes on and says, starting in line 11 of page 1:

“A further object of my invention is to provide a supporting member which is hingedly mounted relative to the hinged side of the cover portion of the luggage and which supporting member carries a hanger rod over which the garments may be folded, which garments are further folded over the free end of the supporting member when the same is being moved to normal packed position in the said cover portion.”

The supporting member referred to in that quotation is the member which I have designated with the letter C in Fig. 1 on the chart, Exhibit 9, and the hanger rod referred to is the rod designated with the letter D.

This quotation also refers to the manner in which a garment is hung on the rod, which is then placed on the supporting member so that when the supporting member is folded into this position within the cover it receives the secondary folding over the

(Testimony of Irving C. Roemer.)

free end of the supporting member, as I have just described.

Going on, the patentee says at line 34:

“A further object is to provide hand luggage, having therein a garment-supporting member carried relative to the hinged side of the upper or cover portion of the luggage, and a removable hanger rod carried adjacent the said hinged side in co-acting relationship to said supporting member.” [263]

Mentioning the removable hanger rod, that refers to the detachability of the rod D.

The patentee then says, beginning line 41:

“A further object of my invention is to provide hand luggage, having therein one or more garment-supporting members carried relative to the hinged side of the upper or cover portion of the luggage, which supporting member or members are adapted to have carried thereon one or more removable hanger rods over which the garments may be folded, which garments are further folded over the free end of their respective supporting member as the same is being moved to normal packed position in said cover portion.”

By that we see that the patentee contemplates that there might be more than a single bar D supporting the member C, and that in supporting a plurality of bars D in that manner more than one garment may be hung on the bars D, which when put in place would cause all of the garments hung thereon to be folded or draped over the folding edge

(Testimony of Irving C. Roemer.)

E of the supporting member C when it was moved into its packed position within the cover of the luggage.

Q. Now, will you please refer to Claim 4 of the Shoemaker patent in suit, one of the claims relied on, and read that claim on the structure in the chart of the Shoemaker patent?

A. Claim 4 calls for "Luggage, comprising a body portion; a cover portion hingedly connected to said body portion." I will interrupt myself in the middle of the claim and refer to the body portion, which I have designated with the reference letter A on the chart Exhibit 9, and cover portion which is designated by the reference letter B.

The claim goes on——

The Court: Pardon me. Where is that?

A. In claim 4, line 3. Page 4 of the patent, at line 25 now. [264]

Mr. Morsell: Pardon me, your Honor. If you will refer to the typewritten pages; we have claim 4 broken down there.

The Court: I see. Proceed.

Mr. White: If your Honor please, may I interrupt for a second? I just heard some reference made to typewritten pages. I understood it was a copy of the patent. I just want to understand what the typewritten pages refer to.

Mr. Morsell: Merely to the analysis of the claims broken down.

Mr. White: Could we have a copy of it?

(Testimony of Irving C. Roemer.)

The Court: Here is a copy, here. I have two of them.

Mr. White: We have a copy of the patent, your Honor. I did not know just what the typewritten pages referred to.

The Court: Now, going back to page 4.

The Witness: Claim 4. I have read the claim, including the body portion and the cover portion of the luggage. Now, I continue with the claim where it starts after the semicolon:

“A garment supporting member hingedly connected to the hinged side of said cover portion.” That member is the member which is colored red on Exhibit 9 and identified as the part C, and is hingedly connected to that portion of the cover member which is hinged to the body member. The hinges between the cover member and the body member is, of course, at the point where they are shown joined together, and the hinge between the supporting member C and the cover member B is illustrated clearly in Fig. 4 of the drawings, but it does not have a reference numeral; it is a small metal hinge in this particular embodiment of the invention, so the member C may be folded over the luggage, and I may point out that the only purpose of the hinge is to hold the member in place within the suitcase. So it is not a separate member to be taken out and moved about, but it is held in place [265] there and that hinge is at same time permits it to be swung from a horizontal position, which is

(Testimony of Irving C. Roemer.)

one of the positions in which it is used in packing a suitcase, to a vertical position, in which it is entirely contained within the cover portion of the suitcase.

The claim goes on:

“and a garment-supporting means removably carried by the hinged side of said supporting member.” The garment-supporting means is the bar D shown in blue, and it is removably carried by the hinged side. It is removably carried by this side. That is the side adjacent the hinge of the suitcase by the member C. It is shown also in Fig. 4, where the blue bar D is shown as attached adjacent the hinged connection of the supporting member C and within the cover member B.

The Court: It is time for adjournment. We will take an adjournment until two o'clock.

(A recess was here taken until two o'clock p. m.)

[266]

(Testimony of Irving C. Roemer.)

Afternoon Session.

The Court: Proceed, gentlemen.

IRVING C. ROEMER,

Recalled;

Direct Examination

(Resumed)

Mr. Morsell: Q. Mr. Roemer, I will read Claim 10 of the Shoemaker patent in suit to you element for element and would ask you to apply each element as I read the same to the structure of the Shoemaker patent exhibited in the chart Plaintiff's Exhibit 9. Claim 10 reads:

“Luggage, comprising a body portion.”

A. The body portion of the luggage is the portion shown by the reference character A.

Q. “ a cover portion hingedly connected to said body portion”.

A. The cover portion is the portion B which is hinged to the body portion at the point where they are shown as joined in the drawing.

Q. “a garment-supporting member carried by the hinged side of said cover portion”.

A. The garment-supporting member is that member C shown in red on the drawing and it is carried by the hinged side of the cover portion; or, in other words, by that side or end of the cover portion that is hinged to the body portion.

(Testimony of Irving C. Roemer.)

Q. "said supporting member embodying a garment-supporting means, on which garments may be primarily folded, and a folding edge, on which garments may be secondarily folded".

A. The garment-supporting means is the hanger D which is embodied in the member C. The folding edge is the outer portion, or outer edge of the supporting member or frame C, which is identified by the character E in the drawing.

Q. The garment-supporting means form the bar D, that is shown in [267] its assembled relationship in Fig. 4, is that correct?

A. In Fig. 4, yes, that is the same bar or hanger that is shown at D in Fig. 3.

Q. After the bar D has been engaged with the bracket 29, is that correct? A. 29, or G.

Q. The claim further reads:

"and means for retaining said supporting member in packed position in said cover with said garment supported in parallel relationship to the normal carrying position of said luggage."

A. The means referred to are the straps F which when the garment-supporting member is swung to its position within the cover, or brought across the front and fastened to the opposite side of the cover prevent it coming out. The portion of the claim which refers to supporting the garment in the carrying position refers to the feature of the garment being draped over the edge E to hang naturally therefrom when the luggage is being carried

(Testimony of Irving C. Roemer.)

or when it is in its upright or normal carrying position.

Mr. Trabucco: Pardon me for interrupting. I see no reason for this particular testimony. The patent speaks for itself. We have no objection to the witness testifying as to the claims referring to this structure, but it seems to me that it is just a waste of time. The court can read the patent for himself.

Mr. Morsell: We are merely doing this to familiarize the Court with the relationship of the elements as recited in the claims.

Mr. Trabucco: The patent speaks for itself, your Honor. There isn't any reason for the witness testifying as to where these parts are located. The drawings are self-explanatory.

The Court: You may proceed.

Mr. Morsell: Q. I will now refer you to Plaintiff's Exhibit 7, the alleged infringing hand luggage as manufactured by the defendants [268] Koch, et al, in action 21,273-R. I will read relied-upon Claim 4 of the Shoemaker patent in suit element for element, and would ask you to point out wherein the infringing structure you find these elements, if you do find the same:

“Luggage, comprising a body portion”——

A. This is the body portion of the luggage. That is the main box-like part in which the main contents of the luggage are carried.

Q. “a cover portion hingedly connected to said body portion”——

(Testimony of Irving C. Roemer.)

A. This is the cover portion which is hinged in such a manner that it will close over the body portion.

Q. "a garment-supporting member hingedly connected to the hinged side of said cover portion"—

A. The garment-supporting member is the member which includes this bar or folding member and the links by which it is carried; or, in other words, the frame, the U-shaped frame which is pivotally connected to the hinged side of the cover member. The pivotal connections are those connections which permit it to be moved from its horizontal to its vertical position, and are just inside the cover adjacent the hinge, exactly where I place my finger.

Q. The next element is: "and a garment-supporting means removably carried by the hinged side of said supporting member."

A. The garment-supporting means are in the form of bars or hangers over which a garment may be draped preparatory to placing it in the luggage.

Mr. Morsell: If your Honor please, we are relying on quite a few claims, and I don't wish to burden the Court with reading all of the claims on these structures element for element unless the Court so desires.

The Court: Not unless there is some particular element that I might overlook and there isn't anything in relation to any of these that I cannot follow the language in the claim that I am aware [269] of now.

(Testimony of Irving C. Roemer.)

Mr. Morsell: Unless the Court thinks otherwise I think we can just apply one claim to each of these structures.

The Court: Yes.

Mr. Morsell: And if there is any question then we can go through any of the other claims.

Q. I will now refer the witness to Plaintiff's Exhibit 8, a luggage case admittedly manufactured by the defendants Silverman, et al, in an action of *McBrine v. Silverman, et al*, Civil Action 21,271-R, and I will read Claim 4 of the patent in suit element for element and ask you to point out where you find these elements in this structure:

“Luggage, comprising a body portion”——

A. That is the main box-like portion of the luggage.

Q. “a cover portion hingedly connected to said body portion”——

A. The cover portion is that part which closes over the body portion, by reason of its hinged connection therewith.

Q. “a garment-supporting member hingedly connected to the hinged side of said cover portion”——

A. The garment-supporting member is again the frame which is adapted to be swung from a horizontal position to a vertical position in placing the garments in the luggage, and which is hinged to the cover portion at the hinged side thereof by little pins or pintles arranged where I indicate with my finger at the side of the cover portion that is hinged to the body portion.

(Testimony of Irving C. Roemer.)

Q. "and a garment-supporting means removably carried by the hinged side of said supporting member"—

A. The garment-supporting means again in this case is in the form of a garment hanger which may be taken out and over which a garment may be draped preparatory to placing it in the luggage.

[270]

Q. In addition to the elements which I have called your attention to recited in Claim 4, Claim 10 includes: "Means for retaining said supporting member in packed position in said cover with said garments supported in parallel relationship to the normal carrying position of said luggage." Will you please refer to Plaintiff's Exhibit 7, the Koch structure, and point out the means responding to this element of Claim 10 which I have read?

A. The packed position of the garment-supporting member is within the cover, and in order that it is retained within the cover——

The Court (Interrupting): Independent entirely of the body?

A. Independent entirely. These stays on the side out here are not a part of the garment arrangement. They prevent the cover from falling back; hold it in its open position. It is retained in this position first by little mechanical snaps on the inside of the cover that hold it there, and, secondly, by a curtain which hangs over the front of the open cover and which has snaps adapted to retain the entire structure within the cover.

(Testimony of Irving C. Roemer.)

There is also reference to the position of carriage of the garments. The garments are draped over the outer edge of this frame or garment-supporting member. They are draped over this frame in such a manner that they are carried in an upright position. As I close the luggage it will leave that frame with its bar in an upright position so that it may be seen that the handle of the luggage is at the same end that that bar is. Consequently, garments draped over that bar are draped parallel to the normal carrying position of the luggage.

Mr. Morsell: Q. I now direct your attention to Plaintiff's Exhibit 8, the alleged infringing structure in the action against Silverman, et al, and will ask if you find means corresponding [271] to the quoted means in Claim 10 in this structure?

A. In Exhibit 8 the frame likewise folds to within the cover and is held in place therein by mechanical snaps. There is also a curtain which comes in front of the cover and straps which fasten in front of the curtain in order to retain the garment-supporting member in its position within the cover.

Again, in this case the supporting member has its bar over which the garments are folded at the top of the luggage, and when the luggage is closed the garments are carried in parallel relationship to the carrying position of the luggage.

Q. I now direct your attention to Plaintiff's Exhibit 6, the hand luggage case for ladies' garments

(Testimony of Irving C. Roemer.)

manufactured by one of the plaintiff's licensees, and would ask you to demonstrate to the Court the manner in which the fixture in this case is to be loaded with a lady's dress, for instance.

A. When it is desired to place a garment in the garment fixture of this luggage the hanger is removed and the garment placed over the hanger. This hanger or removable rod is then put in place on the garment-supporting member so that the garment is draped in a natural position over the outer or folded edge of the garment. In this position the garment can be straightened or arranged, the ruffles or pleats, or whatever might need arrangement could be attended to. Then as the supporting member is moved to its carrying position within the cover of the luggage it serves not only to store the garment in its proper position, but it serves to place a secondary fold in the garment, which automatically folds the garment and causes the garment naturally to drape over the folded edge on its outside so that the garment, when carried in the luggage, is always carried in a naturally draped condition, and has no tendency to slide to one side or to another, or to gravitate toward [272] the bottom of the cover.

The entire fixture with the garment thereon is retained within the cover portion and entirely within the cover portion of the luggage in this case with a curtain which is posed over the open side of the cover portion.

(Testimony of Irving C. Roemer.)

Q. Does that arrangement leave the body section of the cover entirely free and accessible for——

A. Yes, other articles of clothing can be placed in the case, which is so far perfectly free of any obstruction.

Q. Now, please take Plaintiff's Exhibit 7, the alleged infringing structure of the Silvermans, et al, and demonstrate the manner in which the fixture in this case functions and operates in the packing of a lady's dress?

Mr. White: Could I ask a question for the record? Exhibit 7 is not the Silverman structure.

Mr. Morsell: I beg your pardon. It is the Koch, et al structure.

A. In Exhibit 7 the garment is placed in the luggage,——

Mr. Trabucco: If the Court please, this testimony is given by the witness to show the applicability of the device of Silverman with reference to the patent. He is not demonstrating the way the manufacturer intends it to be used, and I suggest that that be done if a demonstration is to be made with respect to this particular device.

The Court: Well, let him put on his own demonstration. You may have equal opportunity.

A. A garment is hung over the bar or the hanger, and may be placed in the luggage in the same manner and attached to its support on the garment-supporting member, after which that member may be folded up into the cover of the suitcase,

(Testimony of Irving C. Roemer.)

where it is retained by the mechanical snaps and by the curtain which comes down and fastens in [273] front of it, so that the same result is obtained as was obtained in the last exhibit that I demonstrated.

Mr. Morsell: Q. Do you find that in Plaintiff's Exhibit 7 the garment is carried in precisely the same relationship within the cover section of the case as in the arrangement on Plaintiff's Exhibit 9, and also Plaintiff's Exhibit 6?

A. Yes. The garment-supporting edge, or folding edge of the garment-supporting member is at the upper or, you might say, the handle side of the luggage, so when this luggage is being carried the garment is draped downwardly into the member, or into the edge of the supporting frame.

Q. In packed position is the entire fixture with the garment thereon lodged within the cover of the case?

A. Yes, it is, leaving the body of the case empty for the reception of other articles.

Q. I now direct your attention to Plaintiff's Exhibit 8, the alleged infringing luggage case manufactured by the Silvermans, et al, and will ask you to kindly show the manner of loading and packing the fixture in this case.

A. In placing a garment in this case the supporting frame is lowered and one of the hangers is removed from the frame and the garment draped over that hanger. This hanger member then is

(Testimony of Irving C. Roemer.)

placed in the frame in the same position and in the same manner as in the other cases, so that the garment is draped in a horizontal position over the supporting frame and then by swinging the supporting frame to its position within the cover its folding edge engages beneath the garment and folds it in the same manner, so the garment and the fixture are entirely contained within the cover member, and so that in carrying the luggage the garment is draped in a position parallel to the carrying portion of the luggage, and leaving the body member of the luggage free for reception of other articles. [274]

Q. With respect to these alleged infringing structures, Exhibits of the Plaintiff 7 and 8, I note that the frame member in each instance is of composite construction; that is to say, there is an additional frame element which may be pivoted from a horizontal position to a vertical position.

The Court: Pardon me. Can the garment be taken out at the other end?

Mr. Morsell: Oh, yes.

The Court: Just put that back where it was, the last hanger. No, no; the last slot in that hanger. May it be taken out here, this way?

Mr. Morsell: No. They come out forwardly.

The Court: All of them?

Mr. Morsell: Either forwardly or upwardly. The latches, here, release that.

The Court: You can't release one out there.

(Testimony of Irving C. Roemer.)

Mr. Morsell: Not rearwardly, no.

The Court: Well, there is a suggestion for you. Can you see the value of that?

(Discussion off the record.)

Mr. Morsell: Q. Have you any comments to make with reference to this added or auxiliary frame member and comments as to an alternative way of packing?

A. The purpose of that auxiliary frame member is to enable it to be swung to a vertical position for packing and unpacking, so that if preferred the garment may be hung in a vertical position during the packing. A garment placed in this case according to this method and using this auxiliary member in its vertical position is first draped over the hanger bar and then placed in position with the other hanger bars, and must then be first swung to the position where it was, as I designated it a moment ago, [275] so that the hanger bars are carried adjacent the hinged connection between this frame member and the cover. This is a feature entirely additional to the other features, and, according to my first demonstration, it is seen that the fixture may be used in either way. If it is preferred to use it in a vertical position, or if it is convenient to use it in a vertical position, it may be done so. If it is preferred to use it in its horizontal position it may be used in that way. This hinged frame is a portion of—this auxiliary frame is a portion of the frame which supports the garment and which sup-

(Testimony of Irving C. Roemer.)

ports the garment in exactly the same manner in either event regardless of how the garment is packed in the luggage, and it must at one time be in the position I am illustrating now; that is, by the main supporting frame in a horizontal position so that when that frame is raised to its packed position within the cover it folds and stores the garment.

I might say the same is also true of the structure of Exhibit 7, which also provides auxiliary arms or means by which the garment-supporting means, or garment hangers may be raised to a vertical position for use.

In this case also the garment is placed on the bar in this vertical position if desired, where after it must be returned to its horizontal position, and whereafter the main supporting frame, the important part of the structure, must be used in the way that is taught by the Shoemaker patent to raise and store and pack the garment all in one operation.

Q. After a garment has been engaged on the frame of either Plaintiff's Exhibit 7 or 8 and the frames are moved to the folding position shown, do the extension devices have any utility, or are they of any consequence?

A. No. In their present position they are simply bars which are parallel to the sides of the supporting [276] frame and so arranged with respect thereto that they don't even lend strength to the frame.

(Testimony of Irving C. Roemer.)

Q. In Plaintiff's Exhibit 7, for instance, I notice the extension frame, the side arm carries a pair of lugs. What is the purpose of those lugs?

A. Those lugs engage over the side arms, or the main frame, so that when it is in its folded position the arms of the auxiliary frame and the arms of the main frame become one. They move as a unit.

Q. When the frame is packed and moved into the cover section of the case is the relationship of the frame the same as that of the Shoemaker patent?

A. Exactly the same.

Q. In Plaintiff's Exhibit 8 I note that the main frame section has a downward off-set transverse bar in its inner end, and when the auxiliary section is moved to its horizontal folded position it rests on this transverse bar and is supported thereby. What is the function of that bar, in your opinion?

A. The function of that bar is to stop the movement of the auxiliary frame at a point where the arms of the auxiliary frame become one with the arms of the main frame. Here, again, the auxiliary arms and the main arms come together and function as a single arm. There is no added function in this use of the device gained by the use of the auxiliary arms.

Q. Now, assume that either Plaintiff's Exhibit 7 or Plaintiff's Exhibit 8 is to be packed in confined, cramped quarters, such as berth of a Pullman, where there is no vertical drop or supporting surface available. How would be the convenient and

(Testimony of Irving C. Roemer.)

practical way of loading the case in that instance?

A. Well, it seems necessary, in order to use these auxiliary arms, that the luggage be placed in such a position that there is a drop, that it must be placed on the edge of a table or something to give a drop for the garment, particularly if it happens to be a [277] long garment, a space to hang itself, because if quarters are cramped or if it is not convenient to place the luggage so that a drop is provided, such as if it had to be placed on the floor, or on a bed where the drop there is not convenient, it would be of no value, and probably detrimental, to use the auxiliary arms because in draping the garment in position to be folded it would be wrinkled and mussed rather than folded in a convenient manner.

Naturally, if there is no drop in front of the suitcase the fixture wouldn't be used with the auxiliary arms in their lowered position so the garment could be conveniently draped over the folding member, the folding frame or supporting frame. The garment assumes a very natural position on being placed that way and may be conveniently arranged as to tucks and pleats and one thing and another, and is in such a position that it is automatically folded and stored by movement of the supporting frame to its packed position within the cover member.

Q. Do you find in the Shoemaker patent in suit any support in the disclosures therein for the theory that the garment-packing fixture may include a

(Testimony of Irving C. Roemer.)

plurality of garment bars, or supporting means to pack several dresses or garments?

A. Yes. The Shoemaker patent specifically refers to the use of more than one such garment-supporting bars. I call attention to page 3 of the patent wherein, beginning line 36, the patentee says:

“The stud 37 may be of such proportion as to accommodate and support a plurality of hanger rods 36.” The hanger rods referred to are those in the patent that are equivalent to the plurality of hanger bars in these various models.

Q. I will ask you to refer to the last paragraph on page 1 of the specification of the Shoemaker patent and state whether or not you find any reference there to a packing of a plural number of [278] garments.

A. Yes. In that the patentee says the supporting member or members are adapted to have carried thereon one or more removable hanger rods over which the garments may be folded.

Q. I now direct your attention to Plaintiff's Exhibit 5, an embodiment of the Shoemaker invention in a form for packing men's garments, as manufactured by one of the plaintiff's licensees. Will you kindly demonstrate the manner in which this fixture functions?

A. This fixture, like those previously referred to, has a garment-supporting member hinged within the cover member of the luggage and having a folding edge that is outside, and has a garment-support-

(Testimony of Irving C. Roemer.)

ing means or hanger, one or more of which may be secured relative to the inner or hinged edge of the garment-supporting member. In packing men's garments, for example, a man's sack coat, the garment is placed on the hanger member in much the same manner as a coat is placed on an ordinary clothes-closet hanger, and the hanger member is secured to the garment-supporting member, and overlies the body of the case or luggage in a horizontal position, where it may be arranged in any desired manner. Then the garment-supporting member is folded to its packed position within the cover, and in being so folded gives the secondary fold to the garment, so the garment is retained entirely within the cover member of the luggage, and in such position that it is carried parallel to the carrying portion of the luggage. The garment and the fixture are retained in this position by a curtain which comes up in front of them and is snapped in place. They are also retained in this position again by mechanical snaps within the cover portion of the case.

The Court: How many suits can you put in there?

A. This is designed—this compartment within the case, or the luggage, is designed for one suit. That is a question of size and space, and the number of hanger bars for the suit. [279]

Q. What is the advantage of putting a suit in a case of that kind? Is it to obviate the necessity of getting it pressed when you get to the end of the line?

(Testimony of Irving C. Roemer.)

A. I believe that is supposed to be the purpose.

Q. Well, after taking a trip from here to Chicago, for example, would you be ready to wear a suit pulled out of this suitcase?

A. I believe perhaps counsel could answer that better than I.

Mr. Morsell: Your Honor, if you would let me make the observation, I have used a case of that kind on a number of trips and it is astonishing the condition the suit is in at your destination; it can be taken out wrinkle-free and ready for wear.

(Discussion off record.)

Mr. Morsell: Q. Mr. Roemer, what is the hinged side of the cover in these various pieces of luggage, and also in the Shoemaker patent?

A. The hinged side of the cover is this portion of the cover near the place where this cover is hinged to the body member of the luggage. I should say this is the hinged side of the cover, this the free side, and any place in between here might be the central portion of the cover. I don't think the hinged side of the cover is in any way limited by the patent or by the general meaning of the term "hinged side" to any specific panel or part of the case.

Q. The term "hinged side of the cover" doesn't in your estimation refer to any specific wall of the cover?

A. Indeed, it doesn't. It just refers to one general side of the cover.

(Testimony of Irving C. Roemer.)

Q. Is it a relative term distinguishing one particular end of the cover as with relation to the free end of the cover?

A. Yes, it is. It is used to designate the general position within the cover.

Q. I would like to read a portion of paragraph 3 on page 1 of the [280] Shoemaker specification and would ask whether this statement bears out your theory:

“A further object of my invention is to provide a supporting member which is hingedly mounted relative to the hinged side of the cover portion of the luggage.”

A. “Relative to” in that sense means in the neighborhood of.

Q. Would you say the patentee intended to be restricted to any particular wall of the cover?

A. No. As a matter of fact, I am quite sure he did not.

Mr. Morsell: That completes my direct examination of Mr. Roemer. I wish to reserve the right to recall him in rebuttal if necessary.

Cross Examination

Mr. Trabucco: Q. Mr. Roemer, in discussing the various parts of the cover of the suitcase isn't it a fact that these two sides are the opposite side walls of the suitcase, of the cover, rather, and this is the top side, and this is the hinged side which join the ends of the opposite side walls?

(Testimony of Irving C. Roemer.)

A. They might be referred to in that way very logically, yes.

Q. Doesn't the patentee specifically point out that the lower side of the cover is the hinged side?

A. I should say it is not. The patent doesn't so restrict itself. It shows various types of hinges, the various points of hinged connections which would very clearly indicate that he did not mean specifically that the hinges must be screwed to a certain panel or side of the cover member.

Q. Referring to page 2 of the patent, line 20, I will read to you this part of the specification:

"I prefer to have the side portions cut away as illustrated. 14 illustrates L-shaped hinge plates, one portion of which is suitably riveted flat against the inner face of the lower side of the [281] cover 10."

Do you recall what that structure refers to? That description refers, does it not, in describing the hinging of the garment-supporting member 12 to the hinged side of the cover?

A. Yes, that is correct.

Q. Doesn't the patentee there differentiate between the various sides of the cover throughout the patent? A. Not throughout the patent, no.

Q. Are you familiar with the File Wrapper of the Shoemaker patent?

A. I have read the File Wrapper.

Q. Do you recall having seen in the File Wrapper an argument by the applicant wherein a discussion was had with the Examiner relative to the

(Testimony of Irving C. Roemer.)

word "relative"? Do you recall where the Examiner rejected claims which placed the hinging of the cover relative to the hinged side of the cover?

A. I wouldn't say that I recall it specifically to testify about it without some reference to it.

Q. Do you recall the patentee, the applicant during the pendency of the application having restricted certain claims after an objection had been made by the Examiner?

A. I recall only very generally. It is a few days since I read it.

Q. And, as a matter of fact, the applicant did recognize the difference between hinging the garment-supporting member to the hinged side of the cover and to the opposite side wall, did he not?

A. I wouldn't say that without very careful reference, again, to the File Wrapper, because possibly that may have been done for another purpose.

Q. Do you recall that the word "relative" was removed from certain of the claim after the objection of the Examiner?

A. I recall that yes.

[282]

Q. Then is it not a fact that the patentee recognized that there was a substantial difference between hinging the garment-supporting member to the hinged side of the cover and to the opposite side wall of the cover?

A. No. That doesn't follow as a fact. It is my recollection—of course, I am testifying without that before me—to my recollection that was done for

(Testimony of Irving C. Roemer.)

some such reason as to distinguish from the art where the hinged connection was made between another part of the luggage, and was not made with any part of the cover at all; it was made near the cover, but not with any part.

Q. I refer to the official letter dated July 29, 1929, and I call your attention to the fact part of the letter contains the following on page 1 wherein the Examiner states:

“In Claims 1 to 4, 6, 8, 9, 10, 11, line 3, ‘relative’ is ambiguous and should be canceled.”

Then in response to that official letter the applicant states on page 24 of the file history, page 23 of the file history, he cancels from claim 11, line 3, the word “relative”, and thereby followed the rejection, or answered the rejection of the Examiner. Do you recall such a procedure during the prosecution of the application having been recorded in the File Wrapper?

A. You are reading those statements from the File Wrapper. I don't deny them, but I think it insufficient to read such short statements from such a voluminous document. I think the entire document would have to be examined to determine what was meant by that. I think the patent, itself, and the whole theory of the patent, the operation is such that it is obvious that no particular panel or part of the cover member must be considered as a hinged portion thereof.

Q. Do you find on page 24 of the File History the following:

(Testimony of Irving C. Roemer.)

“I have gone slightly further in making the amendment there suggested in that I am inserting in most of the claims that the [283] supporting member is hingedly connected at the opposite ends to the hinged side of the cover.”

Doesn't that definitely refer to the hinged side of the cover as being the part of the cover on which the garment-supporting member is hinged?

A. Yes, if I understand your question; but it doesn't mean to me that the hinges are actually fastened to a particular part of the cover as long as they are fastened to the hinged portion of the cover, which is that portion of the cover adjacent the hinge.

Q. Speaking of the claims, do you find any of these claims where the garment-supporting member is fixed to the opposite side walls of the cover rather than to the hinged side?

A. I think—did you say “speaking of the claims”?

Q. Yes. Referring directly to Claim 4, I will read this:

“A garment-supporting member hingedly connected to the hinged side of said cover portion.”

Isn't that a definite limitation?

A. Yes, it is a definite limitation.

Q. Don't you find that same limitation in all of the claims relied upon by the plaintiff?

A. That limitation, or one like it, yes, but I don't mean by my answer “Yes” that I think that

(Testimony of Irving C. Roemer.)

hinged side of the cover portion means a specific panel, a very small area of the cover portion. The hinged side, I think, is any portion of the cover which is adjacent.

Q. Have you made a study of the prior art in this suit? A. Yes, I examined the patents.

Q. Will you say the Shoemaker patent is entitled to a broad or a narrow construction?

A. I think it is entitled to a very broad construction in so far as its claims go. The claims, themselves, are rather narrow. It is not a broad patent as we sometimes [284] speak of them. It is not the first disclosure of means for packing luggage, packing garments within a suitcase, or within the cover of a suitcase, but it packs the garment in a certain way, and in packing the garment in that way I think the claims cover it in a very broad manner.

Q. You were describing to the Court the manner in which garments are packed in suitcases of this type. In the prior art isn't it the common practice to support garments in the manner you have designated here? A. I should say not.

Mr. Morsell: Your Honor, I don't think it is proper to ask this witness questions in regard to the prior art. The prior art has not been introduced in evidence yet, and there has been no discussion of the prior art.

The Court: Well, I usually allow a broad latitude.

(Testimony of Irving C. Roemer.)

Mr. Morsell: Well, it seems to me the introduction of the prior art——

Mr. Trabucco: I will withdraw the question. As a matter of fact, the prior art will speak for itself.

Mr. Morsell: Yes.

Mr. Trabucco: During the taking of the depositions in this case in Milwaukee the patentee, Shoemaker, at page 41, was asked these questions and gave the following answers:

“Q. Did it make any difference whether the fixture, as you call it, is pivoted or is to be pivoted to the hinged wall of the cover or to the side walls?

A. For purposes of construction we favored the hinged side as being more practical.

“Q. Why was it more practical?

“A. Because it was more adaptable to different constructions of luggage cases.

“Q. Clothing less likely to catch?

“A. No. The construction I refer to was the matter of the box, the foundation of the case, itself, [285] and how it was adapted to have a fixture fastened to it.

“Q. Explain that a little further, as to just why you chose the hinged side of the cover.

“A. Well, the base could be made of a material like wood and the rest might be soft leather.

“Q. You mean the base of the cover?

“A. I mean—yes, the hinged side of the cover.

“Q. You refer to the hinged side of the cover as the base? A. Yes.

(Testimony of Irving C. Roemer.)

“Q. And that was quite common, was it, to have the hinged side of wood and the other sides of leather? A. It is even to-day.”

Now, do you agree with the patentee in these statements and the answers?

A. Yes. I am not in a position to contradict anything that he said. He used terms referring to certain parts—there are certain discussions, it seems to me, in those conversations that it shows that a particular hinge is not the concern of this patent, at all, that the concern of this patent is hinging this supporting frame to swing from a point, from a general point within the cover member, and I think the things you have just read there demonstrate that, and I agree with what was said about the type of hinge being determined by convenience in the particular case. In one type of construction it will be hinged to one part of the cover, in another type of construction it may be hinged to another part, as convenient.

Q. Do you mean to say when a patent is limited in a certain regard you can go beyond those limitations to include structures, for example, that are shown in the prior art?

A. Not if the patent is limited, no.

Q. You are familiar with the prior art, are you not, in this particular case? You know what the prior art is? A. I have read the patents, yes.

Q. You still testify that the Shoemaker patent is entitled to a broad construction? A. Yes.

(Testimony of Irving C. Roemer.)

Q. Notwithstanding the fact that the inventor, himself, testified that he meant by hinging the garment-supporting member to the cover that it should be hinged to the hinged side of the cover, you claim that the patent should be broadly interpreted notwithstanding the acknowledged limitation of Shoemaker, is that correct?

A. I did not say what you said. I don't contradict what Mr. Shoemaker said in his testimony, but I don't say that he said what you have said that he said. I am taking what he said to be what you read from his testimony in the deposition.

Q. I will ask you to make another demonstration with reference to Plaintiff's Exhibit No. 8. You are familiar with suitcases of this type, of course, and you know the natural, or the loading position of these suitcases, do you not?

A. I believe I do, yes.

Q. Will you extend the device to a loading position?

A. You mean to bring the fixture from its packed position to its horizontal position?

Q. Yes. I mean to its loading position.

A. The loading position of this device may be, as I previously demonstrated, the horizontal position over the body of the luggage, that is, as taught by the Shoemaker patent, or it may be in a position with the auxiliary frame brought up to a vertical position.

(Testimony of Irving C. Roemer.)

Q. Is it not a fact that this is the loading position of this particular fixture, rather than one in which the garment-supporting means are located near the cover side?

A. Well, I don't mean to quibble over terms but I think either can be considered the loading position. It may be very conveniently loaded in either position.

Q. In this particular structure do you find the garment-supporting member hinged to the inside hinged side of the cover, or to the opposite side wall of the cover?

A. I think they are one and [287] the same thing, those side walls——

Q. I ask you a definite question, Please answer it.

The Court: Read the question.

(Question read.)

A. I thought it hinged to both.

Mr. Trabucco: Q. Is it not a fact that these two sides are the opposite side walls of the cover?

A. That is what I would call them, yes.

Q. Isn't it a fact this garment-supporting member is hinged to those two opposite sides to the cover?

A. Yes, at the hinged side of those sides.

The Court: Just a minute. "At the hinged side." What is the hinged side? I want to develop this, myself. What is the hinged side of that cover?

(Testimony of Irving C. Roemer.)

A. I have said that I believe that the hinged side of this cover are those portions of this cover down in here.

The Court: Well, I would say that was it. If I am in error correct me. That is the hinged side of that cover.

The Witness: Well——

The Court: I have nothing in mind at all in this case but I want——

The Witness: I would like to correct you on that.

The Court: Certainly.

The Witness: The patent shows brackets of this sort, I mean frame members of this sort hinged. In some cases the patent shows little hinges, little box hinges that are screwed into this particular portion. In other cases the patent shows hinged connections between the inside of these frame members and these parts referred to, side walls of the cover. The thought of the patent is that this be hinged in this general position down here, so that [288] when the frame is swung to its closed position the free side of the frame is up——

The Court: Well, I would say that was hinged on the side wall. Now, correct that statement.

A. It is hinged on the side wall at the hinged side thereof.

The Court: At the hinged side thereof.

A. Yes.

(Testimony of Irving C. Roemer.)

Q. What is the importance of "the hinged side thereof"? A. It might be—

Q. Not what it might be. I want to have you define that statement. Why do you add that?

A. We know that this is the side wall. If this is hinged to the hinged side wall and we drop it after that the hinge might be here, that would defeat the purpose of the patent. The hinge might be here. The device would be useless for the purpose of the patent. It must be hinged.

Q. We are talking about this cover.

A. Yes, where they are hinged. They are hinged right here.

Q. That is the side wall.

A. This side wall—in order to determine where they are hinged, in order for me to tell you where they are hinged without showing you I have to say where, I have to say this is the free end of the side wall, this is the hinged side of the side wall, this is the intermediate portion.

Q. That is the reason you add "the hinged side"? A. "Of the side wall," yes.

The Court: That's all right.

Mr. Trabucco: Q. Mr. Roemer, why would the patentee say in his claim "hinged on," or "hinged to the hinged side of the cover" rather than say "hinged to the cover"? Isn't there some reason why he did that? A. Yes.

Q. Why? A. Because I believe—

Q. Why?

(Testimony of Irving C. Roemer.)

A. Because he wanted to show, he felt he must say because [289] of the insistence of the Examiner in the patent office, because of the prior art, he must show a full and show the real value of this invention where it was hinged.

Q. Then, as a matter of fact, he must have limited the patent in view of the prior art and in view of the objection of the Examiner?

A. Why, of course. I believe I read very few patents where that has not been done.

Q. Then you must admit there is that definite limitation in these claims.

A. Of course I admit that, but I don't want you to misinterpret my admission.

Q. Is it not a fact the applicant, during the prosecution of the application, purposely limited the scope of the claims by providing that the garment-supporting member was hinged to the inside hinged side of the cover?

A. I think he did purposely do so, but I would like to finish my statement without interruption.

Q. Yes.

A. The claims are very definitely limited, I feel, to the hinged structure being shown in this side of the cover member, being in the hinged side as distinguished from the top side. I think the patentee is not attempting, or did not intend to claim a frame that was hinged out at its upper end, or at the free end of the cover member. To that extent I believe the claims are limited.

(Testimony of Irving C. Roemer.)

Q. You understand, Mr. Roemer, the claims of a patent define the metes and bounds of the patent monopoly, you understand that? A. Yes.

Q. You understand——

A. I believe I understand that.

Q. You understand the public is made acquainted with the prior art and what the extent of the invention is, how far they can hope to go in the way of manufacturing the devices in accordance, or similar to a patent, and you understand, of course, the claims define the [290] limitation of a particular invention; is that not so?

A. I believe that is the case.

Q. Then, as a matter of fact, the patentee in this particular instance has defined his invention and has provided a limitation on the scope of that invention to a device where the garment-supporting member is hinged to the hinged side of the cover; is that not true?

A. I think that is correct, yes.

Q. Referring now to Claim 4, being one of the several that are relied upon——

The Court: We will take a recess for a few minutes.

(After recess:)

Mr. Trabucco: Q. Mr. Roemer, you are familiar with the file history, aren't you, in connection with the Shoemaker patent application?

A. I have read the file history.

(Testimony of Irving C. Roemer.)

Q. Do you recall an interference was declared between the Shoemaker application and Wheary?

A. Yes, and several others, I believe.

Q. Are you familiar with the claims that were involved in that interference?

A. I have read the claims, but I am not familiar with them off-hand.

Q. Do you recall whether or not there were any limitations in the claims in connection with the hinging of the garment-supporting member to the hinged side of the cover?

A. I don't recall that off-hand.

Q. If I read one claim to you would you then be able to determine whether or not such a limitation was in the claim?

A. I will try to.

Q. I will read No. 13 (reading claim No. 13). Do you find in this claim any such limitation?

A. As I understand that claim it doesn't say that the garment-carrying frame is pivoted to the cover member at any place. [291]

Q. Is it not a fact that in this interference proceeding priority was awarded to Wheary over the Shoemaker application?

A. I believe it was.

Q. Then, as a matter of fact, if Shoemaker was entitled to a broader construction of his claims he no doubt would have had such broader claims in his application; is that not true?

A. I don't quite follow that as necessarily true.

Q. In making your demonstration, Mr. Roemer, you demonstrated the device in this particular position, did you not?

A. Yes.

(Testimony of Irving C. Roemer.)

Q. In this position the garment-supporting means is positioned near the hinge of the cover; that is true? A. Yes.

Q. But in this position where do you find the garment-supporting means; assuming these members are the garment-supporting means where do you find them? Are they adjacent the hinged side of the cover? A. No.

Q. Is that the loading position of the device?

A. That is one of the loading positions.

Q. Then, as a matter of fact, the claims of the patent in suit do not read on this structure at all times; is that not true?

A. Well, I feel they do.

Q. I will ask you to read No. 4, when the device is in this position, and see whether or not they do. I will read it to you:

“Luggage, comprising a body portion; a cover portion hingedly connected to said body portion; a garment-supporting member hingedly connected to the hinged side of said cover portion and a garment-supporting means removably carried by the hinged side of said supporting member.” Where do you find the garment-supporting member hingedly connected to the hinged side of the cover portion? Will you kindly point that out to the Court, please?

A. The garment-supporting member [292] is this frame which is hingedly connected to the hinged side of the cover portion.

(Testimony of Irving C. Roemer.)

Q. What do you mean by "garment-supporting member"? Merely this part of the device, the two side bars? A. Yes.

Q. What do you call the upstanding part of the device?

A. That is an auxiliary portion of the garment-supporting member.

Q. Do you find in the Shoemaker exemplification any such dual construction?

A. Do you refer to one of the exhibits, or to the patent?

Q. Well, particularly to Fig. 1 of the patent. Where do you find any hingedly connected section such as you have in defendant's structure?

A. There are no such members shown in Fig. 1 of the Shoemaker patent.

Q. How can you say that defendant's structure is made in accordance with the showing of the Shoemaker patent when there is not such dual construction in the Shoemaker patent?

A. I have said that it is made in accordance with the teaching of the Shoemaker patent and that there are added parts, there are parts added to the teaching of the Shoemaker patent where Shoemaker doesn't show these bars; he doesn't show the idea of loading in this position.

Q. Do you find any difference in the operation of this device and that of Shoemaker?

A. No. It has no material difference in the operation of the device, whatsoever. When the

(Testimony of Irving C. Roemer.)

auxiliary arms are used it is loaded in a different position. The garments are first placed in a different position when it is used in this particular way.

Q. Isn't it a fact that during the initial loading of the device garments are supported on a garment-supporting member such as in this manner and then this auxiliary frame that you speak of is partially rotated preparatory to placing things into the suitcase, [293] and the entire device is then partially rotated again to bring it into the cover of the suitcase; isn't that also true?

A. It may be loaded in that manner, yes.

Q. In the Shoemaker patent do you find any such action as that? Is it not a fact that you have the one partial rotation of the garment-supporting member?

A. That is correct.

Q. And there is such a decided difference, is there not, in the operation of the two devices—

A. Yes, there is a decided difference in the operation of the Shoemaker device and the device of Exhibit 8 when the auxiliary arms are used.

Q. Isn't it a fact the auxiliary arms are used in the manner demonstrated in most of them equipment, or almost all that use such a cover?

A. Well, I couldn't testify to that. I don't think anybody would be able to testify to that.

Q. Again referring to Plaintiff's Exhibit No. 8 in an extended position, I will ask this: where do you find that clothes supporting means carried by

(Testimony of Irving C. Roemer.)

the side wall of the garment-supporting member?
This entire structure is the garment-supporting member, is that not true? A. Yes.

Q. According to your interpretation?

A. Yes.

Q. Where is the hinged side of it?

A. The hinged side of that member is the side at which it is connected to the cover.

Q. After it is in an unpacked position demonstrate to the court.

A. The hinged side of the garment-supporting member is still at a place where I pointed, within the cover.

Q. Reading the claim again: "A garment-supporting means removably carried by the hinged side of said supporting member." Where do you find the garment-supporting means carried by the hinged side of the garment-supporting member"?

A. I find that right here. These bars, here, these four bars are the garment-supporting means [294] and they are carried most of the time by the hinged side, even if you are going to use these auxiliary arms and swing them out from the cover, they are carried at the hinged side of the garment-supporting member. Here is the garment-supporting member. I have my hand on its free side. The inner side is the hinged side. These bars are at the inner side at the hinged side.

Q. In an extended position is it not a fact that these garment-supporting means are carried by this

(Testimony of Irving C. Roemer.)

auxiliary frame and the supporting bars of this entire structure are carried by two brackets on the body of the case rather than by the hinged side of the garment-supporting member; is that not true?

A. Well, yes, of course, they are still indirectly——

Q. You say——

Mr. Hursh: May it please the Court, I would like to have Mr. Trabucco allow Mr. Roemer to finish his answers. A number of times he has interrupted Mr. Roemer in the middle of the answer and has not allowed him to explain. Mr. Roemer would like to explain his answers. I think it only fair to the witness to permit him to fully explain the answers he has given.

Mr. Trabucco: I will try to let him explain.

The Court: Very well.

The Witness: I was just answering the question as to the support of these members. They are still indirectly supported by the hinged side. Of course, they may be moved away from a member and be taken completely off. They are removable members. They get their main support right here, the supporting members at the hinged side of the garment-supporting member. It is their normal position.

Mr. Trabucco: Q. You were speaking of indirect supporting of the hinged side of the cover. What do you mean by "indirect"? [295]

A. By "indirectly" I mean that they are still connected with it. When the auxiliary arms have

(Testimony of Irving C. Roemer.)

been swung to this position there has been no break in the connection. The arms are in turn supported by the frame member. Those arms are a part of the frame member. They just swing from one position to another on the frame member. If you were to put it in this position and then take the frame member away they would fall on the floor, so they are indirectly supported by that member. They depend on that member for their support.

Q. Are they carried by the hinged portion of the garment-supporting member as called for on the claims? A. Yes, I think they are.

Q. When in that position, a folded position, do you find that the garment-supporting means, namely, these hanger rods, are removably carried by the hinged side of the garment-supporting member of the hinged side of the garment-supporting member? A. Yes.

Q. Is it not a fact they are suspended from the pivotal end at the outer or the opposite end of the garment-supporting member?

A. Yes, but this is not the garment-supporting member in this position. There is no function to these arms in this position, in the normal position, unless it is desired to move them up to a vertical loading position. It is all the garment-supporting member. This is the hinged side of the garment-supporting member, and there they are.

Q. This device is not made in accordance with the teaching of the Shoemaker patent, though, is it? Shoemaker doesn't show the two sections, hinged

(Testimony of Irving C. Roemer.)

members, one carrying a number of garment-supporting members and the other pivoted section hinged to the opposite side of the cover?

A. He shows some of those things, others I believe he doesn't show, but the Shoemaker patent, like any patent, is an expression of a typical form and the commercial forms of inventions very clearly vary in mechanical detail. I think Shoe- [296] maker shows substantially everything of importance in this particular structure here with the exception of the auxiliary arms.

Q. Shoemaker shows about ten different modifications in his patent, or at least seven or eight modifications; isn't that true?—different structures in which the structure differs slightly.

A. Yes, a great many.

Q. Does he in any of his modifications show a structure such as to be used——

A. You mean does Shoemaker show a structure where the loading is in this position of Defendant's device?

Q. Yes, either in connection with the loading of the device or in regard to the structure, itself.

A. Yes. Shoemaker shows a modification to provide for loading in the same position as loading is accomplished in this Exhibit 8.

Q. What claims would you say read on that particular structure?

A. I am not prepared to say off-hand.

Q. Is it not a fact that none of the claims read on that structure?

(Testimony of Irving C. Roemer.)

A. I don't know off-hand. I will have to read the claims again before I can answer that question positively.

Q. When the device is in a partially folded position the purpose first of all, of these multiple hangers, is to hang a number of different garments. Is that not correct?

A. Yes, a hanger for each garment.

Q. In this position, when one of the hangers can be taken off individually, is that not true, without disturbing the others; for instance, the outer one can be removed very readily and the inner one without disturbing any of the others?

A. I rather doubt that would be practical. I can see where it would be possible to remove a hanger, a garment.

Q. Isn't it a fact you can remove any one of these hanger rods without disturbing any of the others? A. No. [297]

Q. Well, do you find that same condition in the device when it is folded, in a partially folded position? Can you, for instance, remove the inner garment without disturbing those on top of it?

A. Well, I have never tried to do so. It never seemed desirable to me. I think it can be. I have taken the inner garment member off without taking the top one off.

Q. Suppose the garment-supporting members, or garment-supporting means, rather, the hanger rods were fully loaded; that is, suppose garments were

(Testimony of Irving C. Roemer.)

packed on those devices. How, for instance, would you remove the inner one when the others overlying that inner one had garments on them?

A. It wouldn't be practical either in this position or in the upright position.

Q. It wouldn't be practical in the partially-folded position, that is true, is it not?

A. I think not.

Q. But it would be in the upright position. Isn't that what the maker of these devices claims, that the garments can be readily removed without disturbing any of the others?

A. It may be possible in some cases, depending upon the garment, but I rather think it would be a very awkward operation and not practical. The garments would certainly be disturbed and mussed up to a great degree.

The Court: You are thinking about silks, I suppose.

A. Yes. If it were very fine garments, very small garments, they could be slipped out of there.

Mr. Trabucco: They would have to be silk garments, though. Q. You spoke of the cross bar being for the purpose of permitting the entire device to fold as a unit, this cross bar which is fastened to the hinged part of the garment-supporting member. Is it not a fact that the other part of the garment-supporting member may operate freely with respect to the hinged part of the garment-supporting member irrespective of this bar?

(Testimony of Irving C. Roemer.)

A. Yes. It swings [298] up, swings in one direction. The auxiliary bar swings in one direction regardless of that bar.

Mr. Trabucco: That is all for Mr. Roemer.

Mr. White: If your Honor please, I would like to ask just a few questions.

Q. If I understand you, Mr. Roemer, you base your opinion that Plaintiff's Exhibit 7 and Plaintiff's Exhibit 8, the luggage, are within the scope of the Shoemaker patent claims sued upon on the assumption that when the words "hinged side" appear in the claims they refer not only to the side of the cover which is hinged, but also to other portions of the cover; is that correct? I just want to have the record clear.

The Court: Read the question.

(Question read.)

A. In order to answer that question clearly, may I say that we are using terms that are very confusing because when you refer to "hinged side" I think you mean one thing, and when I refer to "hinged side" I mean another thing.

Mr. White: I refer to the hinged side of the cover.

A. That is what I refer to, too.

Q. Well, I would like to put in the record what you refer to as the hinged side, so the record shows on what you base your opinion of infringement. We are entitled to have the record show exactly what the definition of the words "hinged side of the

(Testimony of Irving C. Roemer.)

cover” on which you base your opinion that the Koch luggage is within the scope of the claims sued upon in the Shoemaker patent.

A. By “hinged side of the cover” I mean, and I think the Shoemaker patent clearly means, that portion of the cover which is near the hinge as distinguished from that portion of the cover which is free. In order to make myself a little bit more clear, I will refer to [299] an ordinary door, such as the hinge——

Q. I prefer you just remain with the cover; just talk about the cover of the device, not the ordinary door.

Mr. Morsell: I think the witness is entitled——

Mr. White: I move to strike the last part of the answer as not responsive. I did not ask for that.

The Court: Let’s confine ourselves to the cover, here.

The Witness: May I demonstrate what I mean?

The Court: Certainly.

The Witness: In referring to the cover of this case it is my contention that when I say “hinged side of the cover” this is what I mean, that portion of the cover between the center line and the hinged end of the cover, that is the hinged side of the cover as distinguished from that portion of the cover between this center line and the free side of the cover.

Mr. White: Q. In order to have the record clear, when you say “center line”, you are point-

(Testimony of Irving C. Roemer.)

ing to the sides of the cover which are not hinged but which are vertical in the open position, is that right?

A. Yes. A line intermediate the free end of the cover and the hinged end of the cover, the line intermediate and parallel to those sections is the center of the cover. So the cover is divided into a free side and hinged side.

Q. You base your opinion on the definition of the phrase "hinged side of the cover," which includes certain parts of the unhinged side of the cover, is that correct?

A. I think that is becoming a little bit involved. I cannot answer that categorically.

Q. When you pointed to that vertical portion of the cover in the exhibit isn't it true the side which assumes a vertical position when the cover is open is not hinged?

A. The whole cover is hinged. [300]

Q. We have to eliminate the sides which are not hinged, or do you want to base your opinion on the fact the whole cover is hinged and therefore all the sides are included within the claims? If so, just say so, so the record will show it.

A. I say the whole cover is hinged and that the cover has two sides, the free side and a hinged side. The side adjacent where the hinges are connected with the cover, it is a hinged cover, it doesn't seem to matter, there is no portion of the cover which is unhinged, the whole side swings.

(Testimony of Irving C. Roemer.)

Q. Take the hinged cover, that has a top?

A. Yes.

Q. That is a rectangular top? A. Correct.

Q. In a rectangular top there are four sides and four edges of that rectangular top? A. Yes.

Q. And out of those four sides there is only one which is hinged?

A. There is only one to which the hinges are directly secured, that is correct?

Q. That is correct? A. Yes.

Q. Then your opinion is that hinged sides of the cover as used in the claims include more than that one side to which the hinge is attached?

A. Why, of course, because it is very clear, because it doesn't make the least bit of difference in the operation of this device. There is no distinction between the operation of this device if it happened to be hinged at one particular place or another very close to it, the whole device operates in exactly the same manner, so there could not be any difference.

Q. You base your opinion on the disclosures in the specification of the Shoemaker patent?

A. Yes.

Q. I call your attention to the Shoemaker patent, page 1, line 77, where we read—will you refer to Fig. 10 of the patent? Isn't it true that in Fig. 10 of the patent the so-called supporting member [301] or frame is just rested on the hinged lower side of the cover without any other connection, just placed thereon? A. Yes.

(Testimony of Irving C. Roemer.)

Q. Now, I will ask you to turn to page 1 of the specification, line 77, and check whether this is correct as I read it. Line 77 says:

“In Fig. 10, the hinging or pivoting of the end of the base portion of the supporting member 12 is done away with.” Now, I stop with that line there, and I will ask you to point out——

A. Will you please tell me what portion of the patent you are reading from? I must have misunderstood you.

Q. Line 77. Excuse me, page 2. Page 2, line 77. Would you point out before we read any further which is the base portion of the supporting member 12 and point it out on that enlarged diagram of the patent drawings, Exhibit 9?

A. The base?

The Court: Show it on that diagram, Exhibit 9.

Mr. White: I will reframe the question. Isn't the part which is colored red the supporting member 12 in the patent? A. Yes.

Q. Isn't it true the base portion is 16?

A. Yes.

Q. That is the base portion. Now, then, I shall read the specification so his Honor can see just where I read, page 2, line 77:

“In Fig. 10 the hinging or pivoting of the end of the base portion of the supporting member 12 is done away with.” Isn't that true, that that would mean that supporting member is not pivoted?

A. Correct

(Testimony of Irving C. Roemer.)

Q. "But in packing luggage this end is rested against the inner face of the hinged side of the cover," and I stop there and ask you to point out the inner face of the hinged side of the cover referred to in the specification at that position, point that out on Plaintiff's Exhibit 9.

A. He is referring in that instance to this surface.

The Court: The red surface?

A. No, the surface behind the red surface, the portion of the inside. [302]

Mr. White: Q. To the horizontal surface; in other words, to the face which is hinged, which carries the hinges? A. Yes.

Q. You say that applies only to that instance?

A. Yes. I say in that instance that he is referring to a portion of it.

Q. Continuing reading the specification:

"And the folding strip pivoted to position, which"—Isn't it true the folding strip in that device is the part which is colored green and marked "E" in Plaintiff's Exhibit 9? A. Yes.

Q. Now, in the operation of pivoting the folding strip up means the turning of the entire supporting frame into the cover? A. Yes.

Q. Is that correct. Now, then, reading further: "which constitutes practically a similar action as would take place if the base portion was hingedly connected to the hinged side of the cover portion"?

A. Yes.

(Testimony of Irving C. Roemer.)

Q. And the last statement refers then to the other modification, isn't that true, where they are actually connected to the hinged side of the hinged portion?

A. Yes. To make it clear, that part of the device is when Shoemaker is saying in effect that regardless of exactly where you put the hinge it is the pivotal action into the side of the cover portion, that general location, that makes this invention operate the way it does.

Q. In that statement he says the pivotal action rests on the hinged side of the cover.

A. With or without hinges, or regardless of the particular position of the hinges.

Q. He also states that the inner face of the lower side of the cover is the hinged side.

A. Yes, that is the way he uses the term there.

Q. That makes that clear. There are two more claims I would like to call your attention to, Claims 26 and 27 sued on, which are slightly different from the other claims. Isn't it true that in those two claims the words "hinged side" do not appear?

A. That is true, yes. [303]

Q. I will read the elements of the claims. The first element is the luggage, which is the general structure, embodying a cover, which is the hinged cover we just described; is that correct?

A. Yes.

Q. Then it refers to a garment-supporting member. Is the garment-supporting member the mem-

(Testimony of Irving C. Roemer.)

ber colored red in Plaintiff's Exhibit 9 on the chart? A. Yes.

Q. The following phrase, which you will remember defining that member, isn't that correct, the phrase following and the phrase I just read will define that member? A. Yes.

Q. It says, "one side of which is hingedly connected to one side of said cover." Now, does that say "hinged connection"?

A. No, it doesn't. It says to one side.

Q. I would like you to point out in Exhibits 7 and 8, either one of the luggage, and state to the court whether the fixture in those cases, or the garment-supporting members are connected to one side or two sides of the cover?

A. I have done that before but I will gladly do it again.

Q. Well, just answer the question. Isn't it true they are connected to two sides of the cover?

A. No, that isn't. By the specific meaning you give the term, according to your meaning they will represent the two sides. According to mine they pivot to the hinged side of the cover.

Q. Let's get away from the "hinged side" in the two claims because the "hinged side" doesn't appear. As a matter of fact, that frame is connected to the two vertical sides of the cover, isn't it? There are two pivots on opposite sides?

A. Yes.

(Testimony of Irving C. Roemer.)

Q. The pivots are opposite with each other, they are not alongside?

A. Yes. In other words, the specification's form of hinge used is a little different than it is as shown in the patent. [304]

Mr. Morsell: If your Honor please, I think that this examination of the witness should be referred to the entire claim rather than segregating several words there that the claim refers to.

Mr. White: Your Honor, that is proper. Of course, this is cross-examination. He may have re-direct examination. I think this is proper cross-examination.

Mr. Morsell: I wish to call the Court's attention to the phraseology.

Mr. White: I shall read the whole claim before we are through. The other part of it is as follows:

“and the other side adapted to swing to a position adjacent to the other side of said cover.”

Isn't that true, the reference is made to the portion “the other side,” is that portion of the supporting member colored green on Plaintiff's Exhibit 9, which is the free end of the supporting member?

A. Yes.

Q. Therefore, in that claim the supporting member is defined as having one side hingedly connected to one side of the cover, and the other side adapted to swing to a position adjacent to the other side of the cover; isn't that correct?

A. That is correct.

(Testimony of Irving C. Roemer.)

Q. Isn't that true in any respect on the luggage, Plaintiff's Exhibits 7 and 8? A. Yes.

Q. Will you point out the two sides of the cover, first the side to which it is hinged and then the side to which the other end swings?

A. This is the hinged side of the cover; this is the free side of the cover. In other words, this is one side, this is the other side. This is the garment-supporting member referred to. It is hinged to one side. At one end it is hinged to one end and at the other end, that is this end, it folds into the cover adjacent the other end, the other side of the cover. This is the [305] free side of the cover and the hinged side of the cover.

Q. Therefore you base your definition in that case on the definition of the side of the cover as if the cover was split in half and entirely across, and in one half of it, the lower half, is one side and the upper half is the other side; is that correct, is that your definition that you have in mind?

A. Yes. Not necessary to split the cover in half, but just to say the hinged side is one side and the free side is the other side.

Q. Well, which side is the hinged side?

A. The hinged side is that side adjacent to which the cover is hinged to the body member.

Q. The parts of the cover included in the specification just pointed out?

A. Any part of the cover member that is closer to—

(Testimony of Irving C. Roemer.)

Q. Which are the "any" parts? Point them out, which are closer to the hinges.

A. Let's look at it from the side. The hinged connection is at this point. This is the hinged side of the cover, right where I place my hand.

Q. Where you place your hand?

A. All the way across here.

Mr. White: Let the record show he placed his hand on the lower portion of the vertical side wall; is that correct?

A. Yes. Well, my hands are not large enough to place them on the whole hinged side of the case, because it is a large cover.

The Court: We will take a recess until tomorrow morning at ten o'clock.

(An adjournment was here taken until tomorrow, Wednesday, March 13, 1940, at ten o'clock a.m.)

[306]

Wednesday, March 13, 1940.

IRVING C. ROEMER,

Recalled;

Cross Examination

(Resumed).

Mr. White: Q. Mr. Roemer, I will ask you to refer again to the Claim 26 of the patent. Yesterday

(Testimony of Irving C. Roemer.)

afternoon is it true that you testified that the phrase in Claim 26, which I shall now read, pertains to the supporting member part 12 which is colored red in the chart, Plaintiff's Exhibit 9, is that correct:

"A garment-supporting member, one side of which is hingedly connected to one side of said cover and the other side adapted to swing to a position adjacent to the other side of said cover."

A. That is the garment-supporting member shown in red on Exhibit 9, yes.

Q. We agreed yesterday that the horizontal part adjacent to the cover in Plaintiff's Exhibit 9 marked with the numeral 16 is the side which is hingedly connected to one side of the cover? A. Yes.

Q. And we also agreed yesterday that the other side, the opposite side of the supporting member 12 on Plaintiff's Exhibit 9, there, is a green line, the other side or free side of the supporting member 12.

A. Yes.

Q. Therefore we can agree that supporting member has a hinged side which is hinged to the cover and a free side, is that correct? A. Yes.

Q. The next element in that claim is:

"A garment-supporting means carried on the first-mentioned side of said member."

Could we agree that garment-supporting means is the hanger rod, hanger rod 30? A. Yes.

Q. Is it true in Fig. 1 of the patent that hanger rod is not shown? A. That is correct.

Q. I will give you a blue pencil, and I would

(Testimony of Irving C. Roemer.)

ask you to just sketch [309] in the outline of the hanger rod where that would appear according to the last part of Claim 26 as I now read—

Mr. Morsell: I object to that, your Honor. If counsel wishes to furnish a reproduction for the use of the witness to sketch it would be all right, but I would prefer to have that exhibit, which is our exhibit, in its original condition. It is an exemplification of the Shoemaker patent, an exact reproduction, and I would not care to see—

The Court: Without marking, indicate it.

A. The hanger rod 30 is placed between the brackets 29 of Fig. 1.

Mr. White: Q. Will you point out—that is the position. Isn't it true that is directly on the hinged side of the supporting member 12, isn't that correct, those brackets 29 are extending from the hinged side of the cover? A. That is correct.

Q. Now, I will ask you to take either Plaintiff's Exhibits 7 or 8. I show you here Plaintiff's Exhibit 7, the Koch luggage, and I will ask you whether or not it is not true that the garment-supporting member, or the hanger rods are in the free side? I will correct the question. Isn't it true the garment-supporting means, or the hanger rods are on the free side of the supporting member or frame?

A. I should say not.

Q. Which means this is not the free side?

A. That is not the free side of the garment-supporting member.

(Testimony of Irving C. Roemer.)

Q. Do you base your opinion that you previously expressed as to Plaintiff's Exhibits 7 and 8 being within the scope of Claims 26 and 27, and the other claims in suit, on your opinion as you express now that the hanger rod in the accused structures, Plaintiff's Exhibit 7 or 8, are not in the free side of the garment-supporting member?

A. That question is a little complicated.

Mr. White: May the question be read?

Mr. White: May the question be read? [310]

The Court: He may answer if he can.

The Witness: I think I can answer the question by saying that when I said that those are not on the free side of the garment-supporting member that the garment-supporting member as it is normally used is with the arms that may be raised to a vertical position, those auxiliary arms in a horizontal position, then the garment-supporting bars are at the hinged side of the garment-supporting member, not at the free side. I think the garment-supporting member, the free side of the garment-supporting member is that side which has the folding edge, and the folding edge even in the position of Exhibit 7 now with the auxiliary arms swung to their uppermost position remains in a lower position; that is actually at the free side of the garment-supporting member.

Mr. White: Q. Now, inasmuch as we are using that word "free side," let's define that word. Isn't it true, going back again to Plaintiff's Exhibit 9, isn't it true that the differentiation between the

(Testimony of Irving C. Roemer.)

hinged side and the free side of that garment-supporting member is that the hinged side is hinged and the free side is not hinged?

A. That is correct.

Q. Is the side in Plaintiff's Exhibit 7, which you have just inspected, into which the hanger rods are mounted, hinged, is that the hinged side of the supporting member or the free side of the supporting member; which is it; it can't be both.

A. The normal position of the garment-supporting rods is at the hinged side of the supporting member. They may be swung into position and assume a different position so that they are not either directly at the hinged side or at the free side of the garment-supporting member. They are in another position by virtue of the auxiliary arms by which they are supported.

Q. Irrespective of the position the side is in to which the rods are, [311] whether it is folded or whether it is extended, is it at any time connected or hinged to any part of the cover?

A. Is it at any time connected or hinged to any part of the cover?

Q. The side into which in Plaintiff's Exhibit 7 the hanger rods are supported in the garment-supporting frame; I am pointing to it.

A. Yes.

Q. Is that hinged?

A. The garment-supporting frame is hinged to the cover.

(Testimony of Irving C. Roemer.)

Q. Is this side—I am pointing where the hanger rod is—hinged to the cover?

A. At some times, yes, in its normal position.

Q. Is it now hinged to the cover?

A. The garment-supporting frame is not hinged to the cover.

Q. Yes. The frame is, but is that side into which the rods are hinged to the cover?

A. That side frame by which the garment-supporting rods are supported is hinged to the cover.

Q. I am asking whether this side, here, is hinged to the cover; is it connected or is it free? Do you have to disconnect the hinged cover when you move it out?

The Court: It is obvious you do not.

Mr. White: Well, that is the point. That is all, your Honor.

Redirect Examination

Mr. Morsell: Q. Mr. Roemer, referring again to the accused structures, Plaintiff's Exhibits 7 and 8, it is a fact, is it not, that the inner end of the garment-supporting member frame are hinged to the inner end of the cover? A. Yes.

Q. It is furthermore a fact, is it not, that the auxiliary frame member when folded downward onto the main frame member is supported on the frame member in one instance by lugs, and in the other instance by a transverse bar, and is thus connected to the main frame member; is that correct?

A. Yes. [312]

(Testimony of Irving C. Roemer.)

Q. And through the medium of these connections do the hanger bars become carried by the hinged ends of the frame, either directly or indirectly?

A. Yes, they do.

Q. Is there any difference in function with the frame folded in the accused structures, with the frame and garment-supporting bars over the arrangement disclosed in Plaintiff's Exhibit 9, the Shoemaker patent?

A. No, there is no difference in function.

Q. There has been considerable discussion here as to what is or is not meant by the hinged side of the case. Can you state whether or not, in your opinion, the patentee used certain terms in defining portions of the cover to distinguish one area from another in the cover?

A. I believe that he did. I believe, however, that the patentee did not indicate that any specific panel of the cover was the hinged side. The patentee said, for example, on page 2, starting with line 89:

"It will be noted that throughout the entire disclosure, I provide a construction wherein the base portion 16 of the supporting member 12 is hingedly or pivotally supported relative to the bottom of the cover when being positioned into packed relationship in the cover 10."

The term "bottom of the cover," there means the lower portion of the cover as distinguished from the upper portion of the cover when the cases are down in a position ready to be packed.

(Testimony of Irving C. Roemer.)

Again, in Claim 26, for example, the language used there shows that the patentee is referring to the hinged side of the cover and the free side of the cover as the only two sides of the cover with which he is concerned. It is obvious that he was not concerned with either of the side panels so that he referred to this cover as a four-sided affair. His entire concern was with two sides of a cover, because he spoke of these two sides in Claim 26 by referring [313] to a supporting member hingedly connected to one side of the cover and then again adapted to swing to a position adjacent to the other side of the cover. In speaking of one side and the other side he refers to a two-sided cover for the purpose of this patent. For any purpose that relates to the manner in which the garment fixture functions the cover only need have two sides, a hinged side and a free side.

Q. Is it your opinion, then, that the terms used throughout this patent and in the claims in defining certain portions of the cover were intended to refer generally to zones of the cover rather than specific panels? A. Yes.

Q. Now, as a matter of mechanics, is there any difference whatsoever in the function or operation of one of these luggage packing frames in a suitcase as to whether the inner end of the frame is hinged to the rear panel of the cover or to some other portion of the cover in that immediate zone or adjacent the hinged connection of the cover?

(Testimony of Irving C. Roemer.)

A. None, whatsoever. It simply describes a choice of hinges. There are various types of hinges and ways of hinging covers or portions or panels of any sort where it is desired to swing them, and many types of hinges that may be used. There is a difference in the choice of the specific hinge shown, for example, in Fig. 3 of the patent drawings, and in the commercial structures that are exhibited here.

Q. I will refer you to Plaintiff's Exhibit 6, a luggage case manufactured under a license under the patent in suit, and would ask you to examine this case and tell me where the frame is hinged with respect to the cover in comparison with the hinge mounting of the frame in the accused structures, Plaintiff's Exhibits 7 and 8.

A. In Exhibit 6 the hinge of the garment-supporting member is in exactly the same position, I place my finger on the outside of the [314] cover to indicate the position as it is on either of Exhibits 7 or 8. On Exhibit 7 I place my finger on the cover to indicate the position of the hinge, and in Fig. 8 I also indicate the position of the hinge. In every case I would place my finger not on the panel of the cover that carries the hinge and connects the cover with the body portion, but, rather, on one of the side panels. Nevertheless, in all cases it is at the hinged side of the cover as distinguished from the free side of the cover.

Q. Some reference was made in cross-examination to an interference proceeding in which the

(Testimony of Irving C. Roemer.)

Shoemaker application for patent was involved with the party by the name of Wheary. From your past examination of the File Wrapper of the Shoemaker patent, can you state what was the structure covered by the Wheary patent which was involved in this interference proceeding?

A. I can state that in the Wheary patent, there was no hinged connection between a garment fixture or, rather, no physical connection whatsoever between a garment fixture, or, rather, no physical connection, whatsoever between a garment fixture and the cover of the luggage. There was a hinged connection which was somewhere near the cover, adjacent to the cover, but it did not touch the cover, and it was not secured to the cover in any manner whatsoever. The fixture was entirely carried by the body portion of the luggage.

Q. Therefore, the claims which were in issue in that interference of necessity had to define the connection between the frame and the piece of luggage in general language, is that not true, so as to comprehend both the Shoemaker and the Wheary structures which had different modes of attachment for the frame? A. That is correct.

Q. Do you, furthermore, recall whether or not the Wheary structure in that interference had any removable garment bars associated with the frame?

A. It had not, no.

Q. It was simply a frame?

A. It was a frame, pivoted frame. [315]

(Testimony of Irving C. Roemer.)

Q. And it did not include the other features of the Shoemaker invention, is that correct?

A. It did not.

Q. On cross-examination considerable attention was directed to the alleged advantages in being able to pack either of the accused structures, Plaintiff's Exhibits 7 and 8, with the auxiliary frame swung in a vertical position, or, in other words, by an instrumentality which projected the individual hanger bars upwardly and toward the front edge of the suitcase body. From your examination of the Shoemaker patent do you recall whether Shoemaker had a contemplation of packing in a similar manner?

A. Yes. Shoemaker showed a structure for facilitating packing in the same manner that the packing is accomplished in these defendants' exhibits. That structure is shown in Fig. 7 of the patent.

Q. I show you an enlarged photostat and colored reproduction of Fig. 7 of the drawing of the Shoemaker patent. Is this a reproduction of the figure of the drawing you referred to? A. Yes, it is.

Mr. Morsell: I would like to offer this chart in evidence as Plaintiff's Exhibit 11. I believe that is the number that is open.

(The chart was marked "Plaintiff's Exhibit 11.")

Mr. Morsell: Q. Will you refer to the structure shown in Fig. 7 as enlarged in the chart and explain how the frame is projected to a vertical position for packing when desired?

(Testimony of Irving C. Roemer.)

The Court: Where is the article, itself? Where is this satchel. Is one available?

Mr. Morsell: We haven't one, a physical model of it, no.

The Court: Why?

Mr. Morsell: Well, we would have to reproduce all the modifications of the Shoemaker patent. There are a number of modifications. [316]

The Court: All right.

The Witness: In this figure of the Shoemaker drawing the garment-supporting member, which is colored red, corresponds to the coloring in Exhibit 9, and marked C, is pivoted to an auxiliary frame which also forms a part of the garment-supporting member, and that frame is pivoted to the side panels of the cover member. When the garments are to be packed the entire fixture is swung out of the cover member and the garment-supporting member is positioned with its folding edge, shown in green, across the top of the open box portion of the suitcase, so it is held, the entire garment-supporting member is held in vertical position with the hanger 30, colored blue, across its uppermost edge, and in the same relative position to the open case as the garment-supporting bars are held in the defendants' structures, Exhibits 7 and 8. In this structure the bar D, the garment-supporting bar or hanger D is removed and the garment draped over it. It is then placed back in the position shown in Fig. 7 and at that time the gar-

(Testimony of Irving C. Roemer.)

ment-supporting member is raised slightly and pulled outwardly toward the person packing the garment, with the result that the supporting frame member, including the auxiliary arm 21, swings downwardly until the inner end of the garment-supporting member, that is the end with the hanger 30 on it, rests within the cover member at the hinged side of the cover member. At that time the garment-supporting member is horizontally positioned over the box or body member of the luggage, and from that position it is swung upward exactly as has been demonstrated with all of these models in evidence.

Q. In the arrangement disclosed in Fig. 7 on the chart, Plaintiff's Exhibit 11, is the packing position of the frame the same as the vertical packing position of the frame in Plaintiff's Exhibits 7 and 8, the accused structures? A. Yes, it is. [317]

Q. And then, again, the auxiliary arms 21 are swung downward into the cover and the frame C is then moved horizontally and then folded vertically into the cover; do the parts assume the same position in relationship as they do in Exhibits 7 and 8 when those frames are collapsed?

A. Yes, they do. The modifications of Fig. 7 still support the garments in a position parallel to the carrying position of the luggage.

Q. Would it be your opinion, then, that the patentee, Mr. Shoemaker, in addition to the main form of the invention wherein he contemplated packing

(Testimony of Irving C. Roemer.)

with the frame horizontal, furthermore contemplated an alternative method of packing with the frame vertically? A. Yes.

Q. Now, in any suitcase or wardrobe case, of course, when the case is opened up and it is in an inoperative position, is not in a position for its intended use, is it? A. Yes, that is true.

Q. A suitcase in its intended use is closed up, collapsed? A. Yes.

Q. For the confinement of garments during transportation.

A. That is the normal position, closed.

Q. That is its normal intended position for use? A. Yes.

Q. In the closed position of the structures of the defendant, Plaintiff's Exhibits 7 and 8, is there any difference in the relationship of the garment-carrying means from that of the patent in suit when the cases are entirely closed, as they are in use in the transportation of garments?

A. There is no difference, at all.

Q. On cross-examination yesterday one of the defendants' counsel, if I recall correctly, made a point that in the structure of the Silverman, et al, Plaintiff's Exhibit 8, by virtue of the vertical disposition of the auxiliary frames it might be possible to take off one of the innermost bars when it was packed for unpacking, and that this added feature gave more accessibility to the individual [318] bars. Now, please examine—I wish to correct my

(Testimony of Irving C. Roemer.)

statement. The case I was referring to when this point was made was the Balkan case, Plaintiff's Exhibit 8. Please refer to Plaintiff's Exhibit 7, the alleged infringing case made by the defendants Koch, and tell me whether this alleged advantage is present in this case when the auxiliary frame is projected to vertical position.

A. It is not present in this case. The bars must follow one another out of their positions on the frame. It is impossible to take one of the rearmost bars out without first taking the forward bars out.

Q. So, so far as that point which was made yesterday is concerned it has no application to the Koch luggage case, is that true?

A. That is true, yes.

Mr. Morsell: That is all.

Recross Examination

Mr. White: Q. Do I understand correctly that it is your contention that the one shown in Fig. 7, the Shoemaker patent, is in your opinion within the scope of the claims sued upon?

A. I did not make any statement to that effect.

Q. Then all the description was merely illustrative of another form but it is not your opinion that that form is within the scope of the claims sued upon?

A. I simply told what was shown in Fig. 7 and explained how it operated in accordance with the teaching of the patent.

(Testimony of Irving C. Roemer.)

Q. Are you in a position to express an opinion at this time whether or not the structure shown in Fig. 7 is or is not within the scope of the claims sued on in this case? A. Not off-hand.

Q. You examined the structure, did you not, in Fig. 7? A. Yes.

Q. You examined the elements of the claims? A. Yes.

Q. You cannot say—

A. I don't think I could testify off-hand, because the claims are numerous and I would rather take time to go [319] over the claims again before I testify as to that.

Q. Isn't it true in the modified form shown in Fig. 7 the hinged connection is at a point 22?

A. One hinge is at the point 22.

Q. The hinged connection to the cover is at point 22? A. Yes.

Q. And the hinged connection is near what we would call the top side of the cover when opened?

A. The free side of the cover, yes, when opened.

Q. Therefore, the point at which the frame in Fig. 7 is connected to the cover is not anywhere adjacent to what you define as the hinged side of the cover, is that correct?

A. That is incorrect.

Q. Then is it your statement that the point 22 is adjacent to what you define as the hinged side of the cover? A. No.

Q. Then it is not near the hinged side of the

(Testimony of Irving C. Roemer.)

cover. It either is or is not. What is your answer?

A. My answer the point 22 is not near the hinged side of the cover, but that is not the hinged connection of the garment-supporting member.

Q. Is there any other hinged connection of the garment-supporting member to the cover than point 22?

A. Yes. Let me explain.

Q. Just point it out.

A. The garment-supporting member is the member comprising the inner bar 16 and the outer bar, including the folding edge 23 and the central bar, the member 12, and this device is being folded—

Q. May I interrupt you? Isn't it true the specification describes 12 as the entire garment-supporting member, not only the vertical bar, so the record is straight?

A. Yes. The garment-supporting member, the H-shaped assembly, is the garment-supporting member. That member is connected to the cover through the ring, or auxiliary arm. Those are the arms designated by the reference character 21. As this device is placed in its normal position, its packed position, these arms 21 swing down and there is a pivotal action between the outer ends of these arms and the garment-supporting member proper. Consequently, it may be said, as a matter of fact it is proper to say, that the garment-supporting member is pivoted relative to the hinged side of the cover.

Q. Pivoted to what—

(Testimony of Irving C. Roemer.)

A. It is pivoted relatively to the hinged side of the cover.

Q. Pivoted to what?

A. It has a direct pivotal connection with the auxiliary arm 21.

Q. Isn't it true it is pivoted at the point 20 to arm 21 and not to the hinged side of the cover?

A. That is true, yes. It is still pivoted relatively to the hinged side of the cover when it is directly pivoted to arm 21.

Q. There is only one direct connection there, that is the connection to Arm 21; is that correct?

A. Yes.

Q. There is only one set of connections to the cover, that is the point 22, which are near the top of the top side of the cover.

A. That is obvious.

Q. That is merely for illustration but it is not your contention that that particular embodiment is within the scope of the claims?

A. I have not said one way or the other about that.

Q. You don't wish to commit yourself?

A. Not now, no.

Q. Are there any other alternative forms shown in the patent drawings which you would contend as being within the scope of the claims of the Shoemaker patent, I mean the drawings in the Shoemaker patent? Did you examine all the alternate methods in the Shoemaker patent?

(Testimony of Irving C. Roemer.)

A. Yes. I haven't checked the claims very carefully with every figure in the drawings. I don't know for sure. If I were given any specific figure and time to review the claims I would be glad to give you my opinion if you wish. [321]

Q. Isn't it true that in the Hartman case, that is, Exhibit 6, the side brackets on which the member is pivoted are connected both to the lower or bottom of what I term the hinged side of the cover and also to the vertical side of the cover? Will you examine that and answer?

A. Yes, that is true.

Q. You don't know of your own knowledge whether Hartman is a licensee—you don't know of your own knowledge if they put that on this particular luggage on account of that connection of the brackets to the bottom or to the side? You don't know that, do you? A. Why, no.

Q. If I correctly understood you, you divided the cover into two zones, one zone in which you included the side here to which the hinge is connected, the other zone into which you included what you call the free side on which this lug is.

A. Yes.

Q. Could you explain just why is the distinction occurring at claim 26 of the patent, the language of the patent says one side of which in connection with the supporting member is hingedly connected to one side of said cover and the other side adapted to swing to a position adjacent to the other side

(Testimony of Irving C. Roemer.)

of said cover. Now, wouldn't it be logical that if there is a division of zones then the second should not be adjacent, but would be into the other side of the cover? Do you think Shoemaker meant this one free side and the other side of the cover — instead of saying "swinging adjacent to," if he meant to say the whole upper zone wouldn't in that way swing into the other side of the cover?

A. That amounts to a rather fine choice of language. I wouldn't deny that that might be the better way of saying it if you chose to say it that way, but I don't think that there is any indication in the specification that he meant one thing or the other.

Q. It means it is just an unfortunate wording of the claim.

A. No. A fortunate wording of the claim, I think. I think the [322] present wording of the claim is just as good as that that you suggest.

Q. For instance, if the frame or supporting member 12, as shown in Fig. 1 or the Shoemaker patent is taken out and instead of being hinged or connected to the bottom side of the cover, as shown in the figure, you hinged it onto one of the vertical sides of the cover and swing it transversely, then wouldn't it be true that you could divide the two zones and it would still be hinged to one side and the free edge 23 would be swung adjacent to the other side, just the same, wouldn't it?

A. Yes, but neither part would be secured to the hinged side then.

(Testimony of Irving C. Roemer.)

Q. Then in your opinion claims 26 and 27 are limited to the hinged side, a connection to the hinged side of the cover, is that correct?

A. Yes.

Q. Is that anywhere expressed in the claim in such language, or any language from which you infer that?

A. No, it is not in those claims. I didn't read the claim when I said that it was, and I wish to correct myself.

Q. Therefore, so far as the zones go, you could divide the cover into zones, according to your theory, around any axis you chose?

A. Yes, I think you could, unless you had read the specification and looked at the drawings before you read these claims and it would be quite impossible.

Q. It is your opinion that any such division of zones was within the contemplation of Shoemaker to divide into zones around any of these axes?

A. That is certainly not my opinion, no. I feel it is necessary to read any patent claim in the light of the specification and drawings of the patent in which the claim is found.

Mr. White: No more questions.

Further Redirect Examination

Mr. Morsell: Q. One additional question. In Plaintiff's [323] Exhibit 5, luggage case manufactured by one of the plaintiff's licensees under license under the patent in suit, where do you find

(Testimony of Irving C. Roemer.)

the inner end of the frame pivoted with respect to the cover?

A. The inner end of the frame is pivoted on a stud which enters the vertical side panel of the cover member with the cover in its open position. There is, incidentally, no connection whatsoever between the inner end of this frame and the panel of the cover where it is hinged to the body portion of the luggage.

Q. Is this frame in Exhibit 5 hinged to the cover in exactly the same relationship as the frame in Plaintiff's Exhibit 7, the Koch structure?

A. Yes, it is.

Q. Is that likewise true of Plaintiff's Exhibit 8, the Balkan structure?

A. Yes. In Exhibit 8 there is a slight difference in the construction of the hinge. In Exhibit 8 the hinge or pivot embodies little brackets as well as hinge pins, but the relative positioning of the hinged part is the same.

Mr. Morsell: That is all, Mr. Roemer.

The Court: Is that all from this witness?

Mr. White: Yes.

The Court: We will take a recess for a few minutes.

(After recess:)

Mr. Morsell: I will call to the witness stand as an adverse witness Mr. Harold Koch, one of the defendants in action No. 21,273-R.

HAROLD M. KOCH,

Called by the Plaintiff; Sworn.

Mr. Morsell: Q. Will you please state your age, residence and occupation, Mr. Koch?

A. I am 37; my occupation is leather goods worker; 163 21st Avenue.

Q. With what concern are you connected at present? A. H. Koch & Sons. [324]

Q. They manufacture leather goods and articles of luggage? A. Yes.

Q. And sell the same?

A. You mean do I sell them?

Q. I say, does the company sell these articles?

A. Yes.

Q. You are the Harold M. Koch who is one of the defendants in the action of the L. McBrine Company v. Herman Koch, doing business under the name and style of H. Koch & Sons, and Harold M. Koch, William L. Koch, and Rebecca Koch, is that correct? You are one of the defendants?

A. I am.

Q. You are the Harold M. Koch that is listed as one of the defendants in this action?

A. Yes.

Q. Is Herman Koch your father? A. Yes.

Q. Is William Koch your brother?

A. Yes.

Q. Is Rebecca Koch your sister?

A. Yes.

Q. In addition to Herman Koch, William Koch,

(Testimony of Harold M. Koch.)

Rebecca Koch, and yourself, all work for the concern known as H. Koch & Sons? A. Yes.

Q. Now, according to a report I have, in November, 1925, the business was incorporated as H. Koch & Company, is that correct?

A. Well, I wouldn't know about that, "& Company."

Q. Yes.

A. Not to my knowledge. I wouldn't know that.

Q. You would not know about that?

A. I wouldn't remember it.

Q. Your father suffered some financial losses in connection with the brewing company, is that correct? A. I guess so; I don't know.

Q. The luggage business was incorporated under the California laws as H. Koch & Sons on August 1, 1934; is that correct?

A. Well, I don't know the date, but it was.

Q. So far as you know?

A. So far as I know.

Q. About the date I mentioned it was incorporated under California laws? A. Yes.

Q. Is that correct? A. Yes.

Q. In February, 1935 the stock and some of the equipment was sold to [325] the Multnomah Trunk & Suitcase Company, is that correct?

A. I wouldn't know the date, but it was around in there.

Q. About the time I mentioned?

A. Around that time.

(Testimony of Harold M. Koch.)

Q. This report further states that the corporation continued as such until February 10, 1937, when application was filed and permit granted to dissolve the corporation. The business was then assumed on a co-partnership basis between Herman Koch, and his two sons, Harold Koch and William L. Koch. Is that correct? A. No.

Q. The business was never on a co-partnership basis? A. Not on a partnership basis.

Q. What was it after the corporation was dissolved?

A. It was my father's; belonged to my father.

Q. The information in this report is incorrect, then? A. It must be.

Q. I read further: "On May 27, 1937, Herman Koch stated that the business was owned by his son and daughter, Harold and Rebecca Koch, and that arrangement continued until he settled a lawsuit filed April 28, 1937 by Aaron Solomon for \$2100." Do you recall anything about that?

A. No, I don't.

Q. When was the organization changed from a corporation to its present form in which it is alleged, I believe, that your father is the sole trader?

A. Well, I couldn't tell you that because I don't know. I never have anything to do with the business end of the business.

Q. You don't know that you were ever a co-partner in the business?

(Testimony of Harold M. Koch.)

A. Well, not to my knowledge, I was never a partner. At one time my father left the business and my brother and myself had it, that is, he gave it over to us.

Q. Well, it was your business at that time, then, was it not?

A. Yes, and even at that time I had nothing to do with it, at least [326] running it, so far as running it was concerned, or anything about office work or anything like that. My brother took care of that because I always worked on the inside.

Q. Well, if it was left to you and your brother it was a part of your business?

A. At one time, yes, it was at one time.

Q. Do you recall when that was?

A. Well, I imagine it was around 1934. I wouldn't say exactly, but around that time.

Q. You do know, however, that there have been a number of changes in the set-up of your company from time to time; that is true, is it not, changing from a corporation to a copartnership, back to a corporation, and operated as a sole trader?

A. Yes, I do know, I heard indirectly, although I wouldn't say I know for sure, because nothing was ever discussed with me.

Q. Do you know the reason for those various changes? A. No, I don't.

Q. You know there were some financial matters and lawsuits that were hanging over the company at various times? A. No, I don't.

(Testimony of Harold M. Koch.)

Q. You, personally, work in the manufacturing end of the business at the present time?

A. Yes.

Q. Do you have anything to do with the manufacture of suitcases? A. Yes.

Q. Is that true of your brother, also?

A. Which one?

Q. William. A. Yes.

Q. Do you have anything to do with manufacturing of suitcases like Exhibit 7 here in issue?

A. Yes.

Q. You knew they were to be sold when you were working on the manufacture of them?

A. Yes.

Q. I show you a photostat of an advertisement of H. Koch & Sons, which is attached to the defendants' answer to interrogatories; I would ask if you can identify this circular as having been issued [327] by your company and describing the goods of your manufacture.

Mr. White: In order to save time, your Honor, that is part of the bill of particulars. It was stated under oath that that is manufactured by the company. I don't know the purpose of it.

Mr. Morsell: I just want to bring out whether this witness is personally familiar with it.

A. Well, I couldn't tell from this, here; I couldn't tell from these pictures. That is, they look just like any other case that I have ever seen.

(Testimony of Harold M. Koch.)

Q. Well, aren't you familiar with any of the advertising material produced by the company?

A. No; I have never seen that.

Q. Well, if— A. May I explain that?

Q. Yes.

A. Well, all the work that I do there, I cover the outside of the case, and sometimes I do the shaping of them. I never bother with any of the other parts of the case. It is sectional work. In fact, I never see it done.

Q. You work on these wardrobe cases, however?

A. Yes.

Q. I will state that under oath your father, Herman Koch, furnished this circular as representing an article of hand luggage manufactured by your company. You would not deny the veracity of that, would you?

A. Well, if, as you say, it was made by us, it must have been. I don't deny that.

Q. That is a statement made by your father in answer to an interrogatory.

A. Well, then, it must be, if my father said so.

Q. I will ask you if the center luggage case on this circular indicated by the letter C corresponds to Plaintiff's Exhibit 7?

A. Yes, I guess it does.

Q. I will read to you certain of the descriptive matter immediately above this showing and referring to it. This says: "The lid contains four hangers

(Testimony of Harold M. Koch.)

for from six to ten dresses; keeps them wrinkle
[328]

free." That, in your estimation, implies that the
hangers are in the lid in the use of this article of
luggage, does it not? A. Yes.

Q. What part of the lid?

A. In what part of the lid?

Q. Yes. A. Well, in the head.

Q. Well, what particular portion of the lid, the
upper part or lower part, or what you might term
the inner part?

A. Well, the entire lid, keeps it in the entire lid.

Q. I am talking now about the hangers, these
bars which are termed hangers. [329]



Mr. Morsell: Now, counsel have a theory the
Storch United States patent and the Storch Aus-
trian patent, the Austrian patent to Storch was
filed some few months, was filed in Austria a few
months ahead of Mr. Shoemaker's filing date in
the United States, December 24, 1928. However, in
Austria the filing of an application is a secret pro-
cess. It goes into the files of the Patent Office.
There is no publication, or the public derives no
benefit from that file in any way, shape or manner.
It is entirely secret. Counsel asserts that when
Storch subsequently filed in the United States after
Shoemaker's filing date that Storch should be enti-

tled to a constructive reduction to practice in the United States, corresponding to his filing date in Austria. That is directly contrary to Section 4923 of the Revised Statutes of the United States.

(After argument.)

The Court: I will allow it subject to a motion to strike and over your objection.

Mr. Trabucco: This is the certified copy of the Storch patent, [335] the Austrian patent, with the translation, an official translation.

(The document was marked "Defendants' Exhibit D.")

Mr. Trabucco: I have a certified copy of the Storch Austrian patent accompanying the filing of the United States patent application, in which the specification states that an application was filed in Austria September 1, 1928.

(The document was marked "Defendants' Exhibit E.")

The Court: We will take a recess until two o'clock.

(A recess was here taken until two o'clock p.m.)

[336]

MAURICE P. KOCH,

Called for the Defendants; Sworn.

Mr. White: Q. Will you state your name, age, and residence, Mr. Koch?

(Testimony of Maurice P. Koch.)

A. Maurice P. Koch, 1983 Jefferson street, San Francisco.

Q. How old are you? A. 34.

Q. What is your occupation?

A. Salesman.

Q. Whom do you work for?

A. H. Koch & Sons.

Q. Is the owner, Mr. Herman Koch, your father? A. That's right.

Q. Since when were you working for the firm?

A. Around January, 1926.

Q. What did you do just before then?

A. I was in school.

Q. Where?

A. New York, Columbia University.

Q. Did you go to work for your father immediately when you returned from New York?

A. That's right.

Q. At the time you returned from New York and you started to work for H. Koch & Sons, did that firm make any luggage with built-in garment racks or fixtures? A. No.

Q. When was the first time that you know of that H. Koch & Sons [344] built in any fixtures into the luggage?

A. Well, that was about the latter part of 1927.

Q. What type of fixture was that, if you remember?

A. Well, that was just a single roller type put in the lid, or a wardrobe box, single roller hanger

(Testimony of Maurice P. Koch.)

with a short elbow, and it was attached to the side walls of the cover, I should judge four to five inches from the free end of the case.

Q. Mr. Koch, I show you a garment rack or fixture installed in a wooden luggage and I ask you whether you can identify that.

A. Yes, I can.

Q. What is it? A. That is a wardrobe box.

Q. Was it a wardrobe box made under your supervision? A. Yes, it was.

Q. When was the wardrobe box made?

A. This particular box was made recently. It is just a wooden box of the type of box that we used back in 1927 and '28.

Q. How about the fixture in it?

A. The fixture that we used with this—this particular fixture is one we obtained recently from the people who made the fixtures for us in 1928.

Q. Who are those people?

A. Larkins Specialty Company.

Q. Larkins Specialty Manufacturing Company?

A. Yes.

Q. A San Francisco concern? A. Yes.

Q. Was the fixture made on your order?

A. Yes.

Q. Who invented that fixture? A. I did.

Q. When did you invent it?

A. I invented this fixture—when did I conceive it, or when was it made?

Q. Tell the story, when you thought of it first, and how it came about.

(Testimony of Maurice P. Koch.)

A. Well, we were making a shorter bracket. Do you mind if I go into the detail on it, or do you want me to show how—

Q. Answer the question to your best ability.

A. Well, we had a fixture similar to this around this rod. The first fixture we made was [345] this part, right here, only about that long. That goes right in the lid. I got the idea that it was—this was quite complex because the dress only had one fold. The hanger fixture came out about here and had one fold, and took quite a bit of room in the body of the case.

Q. Will you, for the purpose of the record, state about when it was that you made the longer bracket the first time?

A. It was around January or February, 1928.

Q. Did you make any in January, 1928?

A. No. I thought of it.

Q. What was it you thought of in January, 1928?

A. Well, I thought by lengthening the bar over which the connecting rod and the dress draped or could be put, and by means of exchanging parts or means of transferring the roll drape here down at the bottom and putting another roll drape on the bottom—

Q. What do you call the bottom?

A. The hinged side of the case; the part where the case is hinged, the top of the cover is hinged—

Q. Then you put it to the hinged side of the garment support?

A. Yes.

(Testimony of Maurice P. Koch.)

Q. Did you ever make a model of that?

A. We made a model of that around April of 1928.

Q. Whom did you discuss it with, if you discussed it with anyone at the time?

A. Well, just my father and the boys up at the Larkins Specialty Company.

Q. Who were the boys at the Larkins Specialty Manufacturing Company you discussed that with?

A. That was Mr. Merryfield and Mr. Kapps.

Q. Who was present at that discussion, or at any particular discussion where you gave an order, if you gave any?

A. Well, Mr. Larkins, Mr. Merryfield, Mr. Kapps, my father and myself.

Q. Did you give instructions at that time for the manufacture of the fixture which you use in that case before you in your hand? [346]

A. We told them we wanted to see a hand-made sample first so we could try the parts in the cover and see if they were the right length, whether they operated correctly before going into any volume production.

Q. Were parts made? A. Yes.

Q. Did you ever give an order to make them in any quantity?

A. Yes, we did, after we saw the first model.

Q. When did you give the order?

A. We gave the order on May 17, 1928.

Q. How do you remember the date?

(Testimony of Maurice P. Koch.)

A. I saw the work sheet.

Q. For how many fixtures was the order made at that time?

A. At the time we placed that order on May 17th, when we placed the order it was for 2000 but we immediately changed that by telephonic conversation to 5000.

Q. Were all the 5000 of the same size?

A. No, they weren't. At that time we ordered 2000 we ordered the 18-inch hanger, and when we increased the order we told them to make them three inches longer so we could use them in our 21-inch box.

Q. I am showing you another suitcase frame with a fixture in it, and I will ask you whether that is what is the 18-inch hanger that you just referred to?

A. That is the hanger that goes in the 18-inch wardrobe box.

Q. Was this part of the same order?

A. Yes. All we did was increase this order here with additional hangers, in this order, here.

Q. Pointing there to the 18 and then to the 21?

A. This is the 18-inch box. We took 2000 of these originally. Then we called them and told them to make another 2000, and then we told them at the time to increase it to 2500 of the small size and 2500 of the large size.

Q. Was that order made up and delivered?

A. Yes. [347]

(Testimony of Maurice P. Koch.)

Q. Did you ever make a model of that?

A. We made a model of that around April of 1928.

Q. Whom did you discuss it with, if you discussed it with anyone at the time?

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Q. Did you give instructions at that time for the manufacture of the fixture which you use in that case before you in your hand? [346]

A. We told them we wanted to see a hand-made sample first so we could try the parts in the cover and see if they were the right length, whether they operated correctly before going into any volume production.

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(Testimony of Maurice P. Koch.)

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Q. Was that order made up and delivered?

A. Yes. [347]

(Testimony of Maurice P. Koch.)

Q. To your knowledge, was there installation of the fixtures—

A. Every one of them.

Q. Into the luggage?

A. Yes.

Q. You, personally, sold such luggage?

A. Yes.

Q. Where did you sell the luggage?

A. Denver west.

Q. When was the first time you went out with the samples?

A. I went out with samples in the early part of June.

Q. All over the country selling them until the 5000 were exhausted?

A. Yes.

Q. Did you ever re-order that?

A. Well, we might have re-ordered; I couldn't tell you off-hand. I never checked into that.

Q. These fixtures in the sample box that you have here are actually part of the order that was made in accordance with the order in 1928?

A. This one is, here.

Q. The large one?

A. The large one, because we took that from the basement of the Larkins Specialty Company. They told me they might have one down there on the original order. We went down there and went through all of their old stuff and we picked this one out.

Q. How about the shorter one?

A. The shorter one, here, I took from an old box that had been, well, it was all smashed and I had

(Testimony of Maurice P. Koch.)

it laying around the factory, and I just picked this up.

Q. Is that fixture part of the same order?

A. Well, I believe it is. I believe it is that same order, unless we got a few more a little later on. It might have been in the new order, but I doubt it.

Mr. White: If your Honor please, I offer in evidence the longer, the 21-inch case with the fixture in it as Defendants' Exhibit K.

(The device was marked "Defendants' Exhibit K.")

Mr. White: And I offer in evidence the shorter one, the 18-inch luggage, with the fixture in it, as Defendants' Exhibit L.

(The device was marked "Defendants' Exhibit L.") [348]

Mr. Morsell: I object to the receipt of both of these exhibits, your Honor. The witness stated they were made at a very recent date for the purpose of this litigation, allegedly to show something that was made back in 1928. For that purpose these are not in any way proof of the manufacture and use of a device back in 1928. They were made for the purpose of this litigation alone, for allegedly illustrating a structure that allegedly was in existence some twelve years ago, and I don't see the competency of these exhibits.

Mr. White: I am afraid counsel misunderstood the evidence. The testimony was that the fixtures were actually made under an order of May 17, 1928,

(Testimony of Maurice P. Koch.)

and the installation into the case, itself, was recent to see how they were installed. That does not apply to the fixture. I will prove this fixture by other witnesses.

(After argument.)

The Court: It goes to the weight of the testimony. Proceed.

Mr. White: They are offered and admitted in evidence?

The Court: Yes.

Mr. Morsell: Your Honor, in regard to these rulings, is it customary to enter an exception?

Mr. White: Under the new rules no exception is required.

Q. I will ask you now to demonstrate, describe the operation of this particular fixture, in Defendants' Exhibit K.

A. May I borrow a dress? There was one there. The bracket is lowered, the roller is removed, the dress is draped over the roller at the middle of the dress, the roller is replaced between the two side brackets and the lid is lifted holding the dress in place.

Q. What did you use at the particular time in order to hold the frame in the cover?

A. Well, at the particular time we didn't use anything. We had a curtain that was connected at the hinged side of the cover, would raise to the free side, and was attached with a clasp. [349]

(Testimony of Maurice P. Koch.)

Q. Was that curtain similar in any way to the curtain shown in Plaintiff's Exhibit 5?

A. Yes, precisely that way.

Q. And it would be the same kind of—

A. Not the same kind of a clasp, but a similar clasp.

Q. Did you sell, or, to your knowledge, did H. Koch & Sons ever manufacture any luggage with that fixture installed into any other part than in the cover of the luggage as shown in Defendants' Exhibit K?

A. You mean did we use this fixture in any other part of this type of luggage?

Q. Yes.

A. No, just in the lid of the cover, just as you see it there.

Q. Did you ever install it in any other way than shown in Exhibit K, in any other manner?

A. No, the hanger couldn't be used any other way.

Q. To your knowledge, or recollection, rather, how long thereafter were you selling that merchandise with the fixture as shown in Defendants' Exhibit K?

A. We used this fixture through, I believe, 1931 or '32, around thereabouts.

Q. Where was your manufacturing plant located at the time when that fixture was made in 1928?

A. 416-426 Natoma street.

Q. When did you move from those premises?

(Testimony of Maurice P. Koch.)

A. Moved there about approximately 1936, I should say.

Q. Where did you move?

A. 73 Beale street, our present factory.

Mr. White: That is all on direct examination

Cross Examination

Mr. Morsell: Q. Mr. Koch, you are familiar, are you not, with the so-called Winship type of fixture? A. Yes.

Q. Which was popular back in 1929 and '30, thereabouts?

A. In 1928, the latter part of 1927.

Q. That consisted merely of a frame which was mounted in the upper [350] portion of the cover, of a wardrobe cover? A. Yes.

Q. And the garments were merely draped over the end of the frame? A. Yes.

Q. Do you know whether or not the fixtures which were used on the Winship type of frame were of considerable depth, considering the dimensions of the cover from the top to the bottom?

A. What do you mean by "considerable depth"?

The Court: Was it much wider at the top than at the bottom?

Mr. Morsell: No. As a matter of fact, when the case was turned vertically into carrying position it had considerably more height than this case before us, is that not true?

A. Considerable more height? No. This is the same size. This box, here, is 21 by 18. At that par-

(Testimony of Maurice P. Koch.)

ticular time the boxes were, there were some boxes that were 16 inches high, as well as 18 inches high.

Q. Well, those were the hat box devices?

A. Yes, that is correct.

Q. Wasn't it customary in that type of a cover to have the cover in many instances rather long?

A. The cover?

Q. Yes, to provide for draping—

A. Well, not necessarily. There were longer cases, yes. We made a case at that time that was 24 inches long, but it was by the same token narrower, but it wasn't successful.

Q. That additional length was to give you more draping room from the top of the cover down?

A. Yes.

Q. And in addition to that additional length did not the Winship structure provide a well in the bottom of the body section into which the end of the garment draped?

A. Yes, that's correct.

Q. Is it not possible that in the earlier days of wardrobe luggage a simple frame of the type you have installed here could have been used in the cover of a case without the additional removable bar?

A. That's right. [351]

Q. Might it not have been mounted higher in the cover of a longer case?

A. That's right.

Q. Do you recall what was the vogue in 1928 in the length of a lady's garment; were they wearing short dresses or long dresses at the time?

(Testimony of Maurice P. Koch.)

A. Well, I couldn't tell you correctly, but I think they were short. I am not sure. You can get me on that one.

Q. Well, now, this particular frame, as you have it arranged here, wouldn't be very suitable for long dresses, would it?

A. Well, that takes four folds. That dress, there, I should imagine, is about 13 or 14 inches long, and four times that would be 56 inches long; that would take quite a bit of length. The average woman's dress is not 56 inches long, and neither is an evening dress.

Q. How do you get four folds in there?

A. Well, very simply. One fold here.

Q. That was the primary fold?

A. That was the primary fold, and split your dress in two when you place it in the hanger, as you have it there, and raise this and you get your secondary fold right here.

Q. Well, you are getting a primary and a secondary fold. A. Yes.

Q. Just as we have been discussing in this litigation? A. Yes.

Q. You said four folds.

A. The dress is folded four—one, two, three, four.

Q. Yes, but I mean there are only two folding operations made.

Mr. White: Well, if your Honor please, if I may interrupt—

(Testimony of Maurice P. Koch.)

The Witness: The dress is folded four times.

Mr. White: He is talking about the salesman's language in the luggage business, and we are talking in patent language.

The Court: Nothing unusual about that. They are each talking their own language.

Mr. White: Yes, but they can't get together as to how many times it is folded. [352]

The Court: Well, I observed it.

Mr. Morsell: Q. Now, Mr. Koch, it seems to me from the way in which this has been manipulated this lower bar is far from adequate in its mounting.

A. I can tell you why that is.

Q. It is too short with respect to the frame, isn't that so, and it is apt to spring out when you move your frame up?

A. In this instance, because this bar, here, we didn't have one of these bars down at the Larkins Specialty Company. All they had was a cap and when we assembled that in here you can see how that sets in there. All I did was to take a round piece of wood and set it in there and cut it off with a knife roughly and it is a little too short this way. It would be the full length across there, if it was it would stay in.

Q. You just made that bar there?

A. That's right. This, here, is new; this is new. The only thing that was old here is the frame and the metal parts. That is the only thing we said was

(Testimony of Maurice P. Koch.)

old. The wood fixture, here, on the box, and the wood is all of recent date.

The Court: Made for——

A. Made for the purpose of a demonstration.

The Court: I understood that.

Mr. Morsell: Q. I understand one of these parts you got from Larkins Specialty Company——

The Court: Over here, the other one. Where did you say you got this one?

A. Those parts, there, came out of an old broken case.

The Court: Old broken case.

Mr. Morsell: An old broken case?

A. Yes. This is the original hanger.

Q. Now, you testified on direct examination that the idea of this form of fixture first occurred to you in January, 1928?

A. Around [353] January or February.

Q. Around January or February?

A. Right after that, the first part of the year.

Q. How do you fix that date?

A. Well, I'll tell you, my dad got back from the East the latter part of the year, and he brought the fixture that was very strange to me, it was made by the T. & L. Manufacturing Company, of Newark, New Jersey, and he bought some fixtures there, and we looked at the thing, and it was just like seeing something for the first time; as a matter of fact, I saw it for the first time, and didn't even know how to use it in a case. I didn't know how it

(Testimony of Maurice P. Koch.)

was going to sell or what it would look like. We made up a box and I saw its impracticability and I started fooling around with it. I played around with the thing all the time until I devised this, and we went to Larkins possibly, oh, several times, maybe a month or so before we even gave him an order, just fooling around until I finally devised something that I liked.

Q. You are fixing this January or February, 1928 date from memory?

A. Well, it was right about then; he got back from New York around October or November, at the end of the year, about the time he always goes.

Q. It is your recollection as to events twelve years ago?

A. Yes. How I fixed the entire date, if you want to know, I fix the date from my work sheets on this hanger; then I just traced it back because I know it was the year before, the Christmas before that that we ever saw a hanger fixture in a case.

Q. Where is the work sheet?

A. Well, Mr. White has it.

Mr. Morsell: May I see that?

The Witness: That is the only thing I can go back to now, twelve years.

Mr. White: We have a photo copy of that. [354]

The Court: We will take a recess.

(After recess:)

Mr. Morsell: Q. Just before the recess you mentioned the fact that you were able to recall

(Testimony of Maurice P. Koch.)

certain events because of what you termed your record. I refer you to Defendants' Exhibit C. Is that the record you refer to?

A. That is the Larkins record.

Q. So when you used the term "your record" you meant, in fact, a Larkins record?

A. Yes.

Q. I just wanted to clear that up. Now, in order that we may have the record clear on this, I would like to make observations while you are doing this; will you please again demonstrate how this is packed in the case, Defendants' Exhibit K? Just please pack it in a normal manner without having your hand there. Take a hold of this frame and move it up. Now, in manipulating this case in your demonstration you have had trouble with the lower bar jumping out of the sockets. That is true, is it not? A. In this case, here?

Q. In Exhibit K.

A. Well, in this particular case, yes.

Q. That is due, you say, to the fact the bar was just recently made by you and made too short?

A. Correct.

Q. As I understand your testimony, the fixtures in Exhibit L were taken from an old box; is that correct? A. That's right.

Q. So those are older fixtures?

A. Yes, that's right. Not older fixtures, no.

Q. The original fixtures which you took from an old box; is that correct?

(Testimony of Maurice P. Koch.)

A. That is what I assumed, yes.

Q. Now, will you please load Exhibit L, having the old fixtures therein, and manipulate it in the normal manner, removing the bar, folding it over the dress and swinging the frame up merely by taking hold of the forward part of the frame. Have the record show, please, that upon the manipulation of the frame toward its vertical position the [355] hanger bar on which the dress was draped dropped out of the sockets. That is correct, is it not?

A. Yes, that is correct.

Q. You stated on direct examination that you sold boxes similar to Exhibits K and L with the same type of fixtures there.

A. Correct.

Q. From June, 1928 through 1932.

A. Yes.

Q. A period of about four years.

A. Yes.

Q. In that time you sold about 5000?

A. That's right.

Q. Of these cases?

A. Yes.

Mr. Morsell: That's all.

Redirect Examination

Mr. White: Q. I want to ask, have you any records of sales on that particular type of box by H. Koch & Sons?

A. No, we haven't. We haven't any records of sales that far back.

Q. Could you say why?

A. Yes; we had two fires.

Q. When?

(Testimony of Maurice P. Koch.)

A. We had a fire, I believe it was in 1931, and one in 1932.

Q. Isn't it true that your father sold the business, the entire business, in about 1935?

A. That's correct.

Q. You started new records at that time?

A. That's right.

Q. Did you have any trouble with the sales of this kind of box on account of imperfections or not holding the dress in there? A. No.

Q. Did you sell during the same time other kinds of luggage with other means of fixtures in them?

A. Other kinds of boxes with other kinds of fixtures?

Q. Or the same kind of luggage with other kinds of fixtures in them.

A. Well, just prior to this fixture we sold a single rack fixture in the lid of the case; that is, in the top end, the upper free end. We sold those shortly after that, too.

Q. What was the next fixture after this was developed that you sold? [356]

A. I believe this fixture right here.

Q. But after this what was the next?

A. After this was the same identical fixture with a multiple arrangement instead of a single roller bar.

Q. The next development after that was which?

A. The next one after that, we took the multiple

(Testimony of Maurice P. Koch.)

arrangement that was in the bottom of the lid and brought that up to a vertical position which is similar to the one we have right here.

Recross Examination

Mr. Morsell: Q. The fires in your plant occurred in what years?

A. I believe they were in 1931 and 1932.

Q. Where was your place of business located?

A. 426 Natoma street; 416-426 Natoma street.

Q. When did you discontinue manufacturing and selling this type of case exemplified by Defendants' Exhibits K and L?

A. Around 1932.

Q. Before or after the fire?

A. Well, we might have made some after the fire; I don't know.

Q. Wouldn't you have records for the ones after the fire, then?

A. Possibly might.

Q. You haven't any available, however, here?

A. Available records here?

Q. Yes. A. No, I haven't.

Q. Why did you discontinue manufacturing this type of case, here?

A. Because the trade demanded a multiple fixture.

Mr. Morsell: That is all.

FRANK KAPPS,

Called by Defendants; Sworn.

Mr. White: Q. What is your name?

A. Frank Kapps.

Q. Where do you reside?

A. 1 Valvez Avenue, San Francisco. [357]

Q. How old are you? A. 37.

Q. What is your occupation?

A. I am at the present time superintendent of Larkins Specialty.

Q. Larkins Specialty Manufacturing Company?

A. Yes.

Q. Where did you work in 1928?

A. I worked at the same place.

Q. What was your job at that time?

A. I was foreman of the press room.

Q. Do you know the defendant, Herman Koch, in this case? A. Yes, I do.

Q. Do you know Mr. Maurice Koch, who just stepped off the witness stand? A. Yes, I do.

Q. Did you do any development or manufacturing work for them at any time? A. Yes.

The Court: Where is this factory located?

A. 268 First Street.

Q. How many people do they employ?

A. They employ around 30 to 40 people.

Q. You worked there for how many years?

A. Since 1917.

Mr. White: Q. I will show you a sheet of paper entitled "Production List Order No. 5-17-B," and I will ask you if you ever saw it before.

(Testimony of Frank Kapps.)

A. Yes, I have seen it before, because it is in my handwriting.

Q. What is it? A. In several places there.

Q. What is it?

A. Well, this one says, "Closed 7/7/28." That is in my handwriting. "Dies Section B-4 85 and 86"——

Q. What does that order refer to?

A. This order refers to 2000 sets of suitcase trolleys.

Q. I show you Defendants' Exhibit K, with a garment hanger or support in it, and I will ask you whether or not you can identify that garment hanger or support, the metal parts of it.

A. Yes; we manufactured those.

Q. Did you manufacture those under the order you have in your hand? [358] A. Yes.

Q. The production list? A. We did.

Q. What is the date of that production list?

A. Well, the order number is 5-17-B. We based that production list on the date; 5-17 would be the fifth month, seventeenth day, and "B" means it was the second order we received that day. "A" would be the first order, "B" would be the second order.

Q. How would you determine whether the particular list was in 1928 or any other year?

A. The only way I could establish that is by my handwriting down here, which says "7/7/28."

(Testimony of Frank Kapps.)

Q. Did you make that notation, "7/7/28" in 1928 or any other time later?

A. I made it at that date, or within a day or so of that date, because sometimes we put the dies down—within a few days, anyway.

Q. Where was the production list kept?

A. It was kept in some old records. We keep our records—we file these production sheets themselves in case we want to look at any time. Sometimes a customer comes in ten years after and he wants something manufactured. We look up this sheet and we know how to manufacture it from the production list.

Q. Was that record in your custody?

A. Yes, it was.

Q. It was in your office? A. It was.

Q. When did you look up that record?

A. When did I find this?

Q. Yes.

A. Well, Herman Koch came down to us three or four months ago, I believe, somewhere around that date, and asked if we had any records of manufacturing the suitcase, the hangers, in 1928, and I looked for these and I found this sheet and those records.

Q. You can identify that production list directly as pertaining to the metal parts of the hanger?

A. Yes.

Q. Defendants' Exhibit K?

A. I can, yes. [359]

(Testimony of Frank Kapps.)

Mr. White: If your Honor please, at this time I offer the production list order No. 5-17-B in evidence as Defendants' Exhibit next in order.

The Court: It may be admitted and marked.

(The document was marked "Defendants' Exhibit M.")

Mr. White: Q. I hand you herewith Defendants' Exhibit M, the production list, and I will ask you to identify part by part the corresponding parts that you have on the order. On the frame, the hanger frame in Defendants' Exhibit K, for instance, point out the first item there, "Rail." A Rail refers to this piece here.

Q. To the entire assembled piece? A. Yes.

Q. Which is the bracket?

A. That is this roll bracket here on both ends.

Q. Both ends of the removable roll?

A. Yes.

Q. Which is the roll bracket?

A. The roll bracket is the piece that this sets in, this half cup-shaped part there.

Q. Sockets? A. Sockets.

Q. Which is the cap?

A. That is this, here, that the wood roller fits into.

Q. Did you ever see that assembled in any way in a suitcase, or did you ever see it in any sort of a suitcase?

A. Yes, we put it in a temporary assembly.

Q. What was the purpose of that?

(Testimony of Frank Kapps.)

A. To test the width; sometimes we have trouble with the width; they don't fit in there after the covering gets around here, and we always test it; we drill holes and test these and see they are fastened to the frame; the cloth on the side.

Q. Was that assembly in the same position as it is assembled on Defendants' Exhibit K before you?

A. Yes, it was.

Q. Exactly the same position?

A. It was. [360]

Q. Could you tell from the production list just how many of those hanger frames you made up in 1928?

A. Well, there is a list on the side, here, in small numbers that are taken from the reading on the press that manufactures them. Each press is equipped with a counter, and these numbers are noted down with the time cards on this production list, and you can tell, 4900, I imagine about 5000 on that sheet, there; pretty close to that, anyway.

Q. When you made that notation on that sheet, "Closed 7/7/28," it means that that order was delivered and that was the end of it; is that right?

A. Yes, that is when we closed this sheet; after the order has been completed and delivered.

Q. Did you work for H. Koch & Sons since then, make any other kind of frame?

A. Oh, yes, we made several different types.

Q. What was the next type, if you recall, that you made after the frame shown in Defendants' Exhibit K?

(Testimony of Frank Kapps.)

A. Well, there was a multiple hanger type which hung more than one rack, one roller on there, or one rod across.

Mr. White: That is all the direct examination.

Cross Examination

Mr. Morsell: Q. Over the course of years has your company, Larkins Specialty Company, done considerable work for H. Koch & Sons?

A. Oh, yes, at times, and at times we didn't. They went out of business for a while and so forth, and the last few years we have done considerable business with them.

Q. Are they a pretty good customer of yours at the present time? A. Yes, they are.

Q. Over this period of years you have made various types of fixtures and frames for them; is that right? A. We have, yes.

Q. Now, the production list, Defendants' Exhibit M, you identify the date which this was made by the numerals 5-5-B; is that correct? [361]

A. No. That might mean any year. I identified it by this "7/7/28" when it was closed.

Q. The order was closed 7/7/28? A. Yes.

Q. Well, the "5-17" might mean May 17th that the order came in?

A. It would mean 1928, but I don't—I mean if I only see that number I couldn't identify that year.

Q. The order was closed, then what was done with it? A. It was filed.

(Testimony of Frank Kapps.)

Q. It was filed?

A. Yes, with hundreds of others. Every time a job comes in we get a new one of these and copy it off the old one.

Q. So you were all through with this on 7/7/28?

A. Yes.

Q. When it was filed away? A. Yes.

Q. It was kept in your files until Mr. Koch asked you to produce it recently? A. Yes.

Q. Has it ever been removed from your files between July 7, 1928 and the present time, when it was given to Mr. Koch? A. No, it has not.

Q. On the reverse side of this production list I call your attention to an ink notation, "July 28, 1939," and the letter "L". What does that mean?

A. That means that Mr. Larkins gave that to Mr. Koch on that day. I was there in the office when he handed it to him, and he signed it when he gave it to him. Mr. Larkins could identify that.

Q. Then that date was the date——

A. That it was handed to Mr. Koch.

Q. That it was removed from your files?

A. Yes.

Q. All of the items on this production list are not in your handwriting, are they?

A. No, they are not.

Q. Could you show me just what item is in your handwriting?

A. This, one, this one, this one, this one, this one, this one, and these, and these. There are only two

(Testimony of Frank Kapps.)

handwritings on there, mine and Mr. Larkins. [362]

The Court: Is Mr. Larkins here?

The Witness: No, he isn't.

Mr. Morsell: Q. The first item on this production list is "Part No. 1, Rail." A. Yes.

Q. After that is 1/16 by 3/4. Can you tell me what that means?

A. That is the size of the material on the estimate. It was copied off the estimate.

Q. What relation has that to the frame, here?

A. Well, the 1/16 by 3/4 would mean the thickness and the width. As to that having relationship to that, it hasn't, because the material was purchased locally and they made it thicker and narrower, but that is a copy that is handed to us from the estimator, and he figures that that might be changed as you go along in production, or you can't purchase the material, or something like that as to width, or something like that. That might be purchased without being changed on here.

Q. In actual production, then, you don't necessarily follow—

A. Yes, we do, as far as the operation goes.

Q. I mean so far as the specifications are concerned? A. It might be changed, yes.

Q. It might be changed?

A. Might be changed, yes.

Q. The top of this sheet contains the notation, the heading of the production list, "2000 sets suitcase trolleys." A. Yes.

(Testimony of Frank Kapps.)

Q. I understood you to say on direct examination that this list indicated a manufacture of about 5000.

A. It does. During the time the plant was not running very efficiently, I don't imagine, and after the production was started Mr. Koch probably came in and told us to run 3000 more. That is only my guess. I can only tell by these notations, both here, that there were 5000 run, because that is the only way I have of knowing. That is the only thing that leads me to believe there were 5000 run. I would say there was 2000, [363] but these notations on the side show there were 5000 run. If you follow them down you will see 4900 and a few other items.

The Court: Q. How did that notation happen to be made on the side?

A. The girls, or the men operators, when they run these they have a time card, and there is a productometer on the machine and each night when they finish they copy it. They start, say, with zero, and run up to 4000. Each night they put down 4000 run on that operation. Then we copy it on this sheet and keep track of the number run.

Mr. Morsell: Q. As to seeing this fixture assembled in a cover, you are testifying merely from memory, are you not?

A. So far as seeing it in a cover?

Q. Yes.

A. I am only testifying from this date that is on here. I couldn't testify any other way. I couldn't remember what I did fifteen years ago.

(Testimony of Frank Kapps.)

Q. I mean your recollection of having seen it assembled in a cover.

A. It is purely from this date that we manufactured—I mean we did the model work on all of them and we had one of these covers up there, and we worked on it at the time.

Q. You are just recalling from recollection that you did see that assembly in that cover?

A. I did see it in there, yes.

Q. Through the years since then you have seen other fixtures installed in other cases, I presume?

A. Yes, three or four that they developed since then.

Q. Have you ever seen a fixture in a finished case in commercial form, that fixture?

A. I have been down to their factory. In fact, I went down there at the time we were fitting this with the estimator to see whether they went in all right, and we made several of those samples.

Mr. Morsell: That is all, Mr. Kapps. [364]

Mr. White: Q. Did you have any conversation with Mr. Maurice Koch prior to May 17, 1928 in connection with the fixture shown in Defendants' Exhibit K? A. What date was that?

Q. May 17, prior to the date of the production list?

A. Yes, because that was the day the order was written, and they don't give us an order without some discussion beforehand. I wouldn't say exactly how long, but models, and development, and so forth went on before that.

(Testimony of Frank Kapps.)

Q. To your knowledge, from those discussions, whose invention and proposition was that at that time? A. Whose invention was it?

Q. Yes.

A. Well, it was Herman Koch's, I imagine; it was between the two of them. They both brought it up. I don't know who thought of it.

Q. Maurice Koch and Herman Koch were both there talking about it?

A. I don't know which one the inventor is.

THOMAS E. MERRYFIELD,

Called by Defendants; Sworn.

Mr. White: Q. What is your name?

A. Thomas Edwin Merryfield.

Q. Are you a resident of San Francisco?

A. Yes.

Q. Where do you reside? A. 65 Cervantes.

Q. What is your occupation?

A. I am the estimator.

Q. An estimator for whom?

A. Larkins Specialty Manufacturing Company.

Q. That is the same Larkins Specialty Manufacturing Company for whom Mr. Kapps works, the man who just testified?

A. Same company, yes.

Q. Since when are you the estimator for that company? A. 1926.

(Testimony of Thomas E. Merryfield.)

Q. Do you know Mr. Herman Koch, the defendant in this case? A. Yes. [365]

Q. Do you know Mr. Maurice Koch?

A. Yes.

Q. Who was on the stand here? A. Yes.

Q. Are you acquainted with this production list?

A. Yes.

Q. Defendants' Exhibit M? A. Yes.

Q. Are you the estimator who estimated that production list?

A. Yes, I estimated the job.

Q. You know of your own knowledge that the rack or fixture which is in Defendants' Exhibit K is one that was manufactured by the Larkins Manufacturing Company on that production list in your hand? A. Yes, this is the one.

The Court: How do you know it is?

A. Because I know, because I made the estimate charge and made this, and I also know from the construction of it.

Mr. White: Q. Where did that come from? Can you identify it to know where that particular rack in Defendants' Exhibit K came from?

A. Yes. This came from out of the office. It has been there years.

Q. When was it taken out of your office?

A. About a week ago, I should imagine; a week or two weeks.

Q. Who took it out?

(Testimony of Thomas E. Merryfield.)

A. I think it was Maury Koch and yourself, I think.

Q. Is that now in the same condition, Defendants' Exhibit K, as it was when it was taken out from your office?

A. Yes, excepting it was not assembled in the case.

Q. Did you ever see a rack similar to that made under that production order assembled in the cover of a suitcase?

A. Well, being the estimator, and having something to do with it when it was first made, I remember Mr. Kapps and I went down there to do the fitting.

Q. Did you fit it in there in the same position as it now appears in Defendants' Exhibit K?

A. Yes. It was fitted exactly the same. [366]

Q. Prior to May 17, 1928, which is the date of that production list in your hand, Defendants' Exhibit M, did you discuss that particular garment-hanger with anyone?

A. Only Maury Koch and his father.

Q. His father is Herman Koch? A. Yes.

Q. Did they come to you first? A. Yes.

Q. Could you recall about how long prior to May 17th that might have been?

A. Oh, just about two weeks, I should imagine.

Q. They came to you. Do they come first to you, or go to somebody else?

A. They generally come first to me.

(Testimony of Thomas E. Merryfield.)

Q. You discuss it with them? A. Yes.

Q. You called in Mr. Kapps?

A. Yes, I called in Mr. Kapps and Mr. Larkins.

Q. Did you then make any preliminary models?

A. Yes, we have to.

Q. Have you any of those models that you made at that time? A. No, I don't think I have.

Q. After you agreed on the exact type the order was given? A. Yes.

Q. That order is 5-17-B, the number, is that correct? A. Yes.

Q. In how many sizes were those made up, Mr. Merryfield? A. Two.

Q. I will hand you here a book, and I will ask you just what that book is. Is that the ledger book of the Larkins Specialty Manufacturing Company?

A. Yes.

Q. Is there any record in it which would refer to that production list or order 5-17-B?

A. It refers to the order.

Q. Could you open up the book where it refers to it? A. I think so.

The Court: Are you the bookkeeper, too?

A. Yes. I don't do the bookkeeping. I look over all the accounts and see they are billed properly. This is it.

Mr. White: Q. On that sheet you found do you find any reference to order No. 5-17-B?

A. Yes. There is a place here, "5-17-B, \$715.26."

(Testimony of Thomas E. Merryfield.)

Q. Does that refer to the production list to which you referred before in this particular garment hanger? A. Yes.

Q. Shown in Defendants' Exhibit K?

A. Yes, that is referred to it.

Q. That book is in your custody and under your supervision? A. Yes.

Q. It was in the same condition all the time?

A. Yes.

Q. Under your charge?

A. Yes, never been out.

Q. It is in the same condition as the usual business records, is that correct? A. Yes.

Mr. White: If your Honor please, I would like to offer in evidence that one page from the book. Could you remove it?

The Court: Well, you got a photostatic copy, you can get a stipulation.

Mr. White: If there is a stipulation that the photostatic copy may be introduced in lieu of the original I shall introduce a photo copy of it.

The Court: He wants to see the original.

Mr. White: Here is the original.

The Witness: 5-17-A was the dies, 5-17-B was the manufacturing.

Mr. White: Q. You say 5-17-A refers to dies?

A. For a suitcase, the cost was \$310.

Q. That was the dies for the garment hangers which are now installed in Defendants' Exhibit K; is that correct? A. Yes.

(Testimony of Thomas E. Merryfield.)

Q. Does it show there the date of payment, the final payment?

Mr. Morsell: The photo is all right.

Mr. White: I will offer in evidence a photo copy of the ledger sheet from the ledger book of Larkins Specialty Manufacturing Company entitled "Koch & Sons, 416 Natoma street" as Defendants' Exhibit next in order.

(The document was marked "Defendants' Exhibit N.")

Mr. White: Q. I will show you another book at this time and I [368] will ask you whether you can describe what that book is.

A. Well, this book is a copy of the invoices that we keep, all the invoices for that particular year, 1928.

Q. Could you find reference to the same production order, 5-17?

A. Yes. It reads 2528 long brackets, 2528 short brackets.

Q. That reads 2581 long brackets? A. Yes.

Q. Is that the bill which was prepared under your supervision? A. Yes.

Q. It was sent up to H. Koch & Sons?

A. Yes.

Q. A carbon copy of it? A. Yes.

Q. It was sent out in the usual course of business? A. Yes.

Q. That is the usual business record?

A. Yes.

(Testimony of Thomas E. Merryfield.)

Mr. White: I offer in evidence at this time a photo copy of that.

The Court: Well, it will be admitted and marked.

(The document was marked "Defendants' Exhibit O.")

Mr. Morsell: All right.

Mr. White: Q. I will ask you to examine that bill and explain just what your notation, "Entered 593", on the bottom, means.

A. It means it is entered in the regular ledger there, that is all.

Q. I will show you a ledger here, and I will ask you whether you find anything after the annotation of 593.

A. Yes, "H. Koch & Sons, 5-17-B, 593." That is the bill number, \$715.26.

Q. 593 means that is the 593rd order in that year?

A. Yes, 593rd bill.

Q. What is the page number on the book there?

A. 90.

Q. What is the year on the top? A. 1928.

Q. What does the "30" mean?

A. Well, H. Koch & Sons, that is the date of the month it was entered in this book here.

Q. You have that record in your custody and under your supervision? [369] A. Yes.

Q. Entered in due order and it refers to the same hanger, same production list for the same hanger shown in Defendants' Exhibit K?

A. Yes, that is true.

(Testimony of Thomas E. Merryfield.)

Mr. White: I offer in evidence a photo copy of the upper part of page 90 of the book.

The Court: Admitted.

(The document was marked "Defendants' Exhibit P.")

Cross Examination

Mr. Morsell: Q. There is just one point I would like your assistance on. This production list, Defendants' M, was, according to the testimony previously given identified by date as 5/17-B, that would be the fifth month, seventeenth day?

A. Yes.

Q. That was when the order was entered?

A. Yes.

Q. Down here in Mr. Kapps' handwriting is 7/7/28. That is when the order was completed?

A. Yes.

Q. I am not quite clear on the variance between those dates. That date appearing on the bill, Defendants' Exhibit N, which is June 30, 1928—

A. Well, it takes that period to complete the job, from May 17th to June 30th; that is only about six weeks at most. It takes that time to complete the job.

Q. I thought the job was not completed until July 7th.

A. No. The job was closed then, not completed.

The Court: What do you mean by "completed"?

A. When the job is completed it is when it is

(Testimony of Thomas E. Merryfield.)

in the shop ready to be shipped out to the place. It is in the factory days before the foreman sends the sheet over and says it is closed. He has certain duties to perform, checking up, before it is sent in to the office, although it may have been billed previously, but we have the delivery tags and the tag would be sent to the office, but [370] it might be a week before the job is sent in as closed, although it is finished ten days before.

Mr. Morsell: That is all.

Mr. White: At this time I would like to offer in evidence as Defendants' next exhibit in order, Defendants' Q-1 and Q-2, the defendants' interrogatories in this case, in the case of 21,273-R, and the answers to the defendants' interrogatories in the case, the first as Q-1 and the second as Q-2, showing under oath by Shoemaker that his invention occurred early in November, 1928.

The Court: Admitted and marked in evidence.

(The documents were marked, respectively, Defendants' Exhibits Q-1 and Q-2.)

The Court: We will take a recess until tomorrow morning at ten o'clock.

(An adjournment was here taken until tomorrow, Thursday, March 14, 1940, at ten o'clock a. m.)

[371]

Thursday, March 14, 1940.

Mr. White: If your Honor please, at this time I would like to recall to the stand for a few questions Mr. Maurice Koch.

MAURICE P. KOCH,

Recalled, by Defendants.

Mr. White: Q. Mr. Koch, I am showing you Defendants' Exhibit K, luggage, with your fixture in it, and I will remind you of the demonstration yesterday when the roller at the base fell out during certain of the demonstrations, and I will ask you whether you can offer any explanation for that operation at that time?

A. Yes, I can. I was a little confused when it fell out, myself, but I noticed—I noticed later that these cups that hold the hanger were put in wrong; just misplaced. This one should be on the inside and that should be on the other side.

Q. They were reversed? A. Yes.

Q. Have you any loose brackets in your pocket that are used in there?

A. Yes. That makes a difference.

Q. Are these exactly the same brackets as the ones installed in Defendants' Exhibit K?

A. Yes.

Q. One side is higher than the other.

A. Yes.

Q. The brackets as installed in Exhibit K have the lower side in the front?

(Testimony of Maurice P. Koch.)

A. Yes, and they should have the higher side in front. They were just reversed.

Q. These roller brackets you have in your hand were made on the same order as testified to yesterday, at the same time? A. Yes.

Mr. White: I offer these last brackets in evidence as Defendants' Exhibit next in order.

(The devices were marked "Defendants' Exhibit R.")

Mr. White: Q. I will show you another luggage, and I will ask [373] you whether that luggage, so far as the bottom and the cover go, were made under your supervision. A. Yes.

Q. I will ask you whether the fixture, the garment hanger in it is exactly the same part, has exactly the same parts as the one in Defendants' Exhibit K? A. Yes.

Q. Were all those metal parts made under the same production order by Larkins Specialty Manufacturing Company? A. Yes.

Q. As the brackets in Defendants' Exhibit K? A. Yes.

Q. And they are exactly the same parts?

A. Yes.

Mr. White: If your Honor please, I offer this in evidence as Defendants' Exhibit next in order.

Mr. Morsell: I would object to the exhibit as immaterial and incompetent.

The Court: I will allow it.

(Testimony of Maurice P. Koch.)

(The device was marked "Defendants' Exhibit S.")

Mr. White: Q. In Defendants' Exhibit S are the roll brackets or sockets, as you call them, at the base, installed the right way?

A. In this case they are installed in the right way, yes.

Q. In your hand you have the roll or hanger bar which you took out from Defendants' Exhibit K?

A. Correct.

Q. Will you place that in the socket in Defendants' Exhibit S? I will hand you another garment, and I will ask you to demonstrate the operation of that hanger in Defendants' Exhibit S. Let the record show that the hanger roll, or bar, at the base did not come out but stays firmly in place during the demonstration. Mr. Koch, is it true that your father, Herman Koch, at the present time is at the Mt. Zion Hospital? A. Yes.

Q. And he was ill the last four weeks and was under an oxygen tent for two or three weeks?

A. Yes, he had a heart attack.

Q. That is the reason for him not appearing to testify at the present time in the trial?

A. Yes. [374]

Mr. White: That is all.

Cross Examination

Mr. Morsell: Q. Mr. Koch, Exhibit S was constructed and assembled by you after your testimony in this case yesterday? A. Yes, sir.

(Testimony of Maurice P. Koch.)

Q. And was constructed and assembled after your demonstration of the cases which were introduced in evidence yesterday, Exhibits K and L?

A. That is correct.

Q. You testified yesterday that Exhibits K and L were made exactly the same as the cases which were allegedly manufactured and sold by you in the spring of 1928; that is correct, is it not?

A. Well, that is correct, but I did not pay any attention to the sockets. They are very easily misconstrued, just looking at them. We haven't made these for a long time.

Q. So there is room for error in the assembly of these parts over the lapse of a period of years; that is true, is it not?

A. Well, it is putting the right where your left should be.

Q. But in Exhibits K and L you didn't assemble the parts correctly then? A. That is correct.

Q. The passage of years led you to an error; you did not recall?

A. No, it didn't lead me to any error. The man who assembled it for me in the factory had never assembled this type of case for us before, and he just put them in wrong. I didn't pay any attention to it; told him to assemble it, told him where to put the brackets, and I never gave the right and left bracket a thought.

Q. In the movement of the frame of Defendants' Exhibit S from the horizontal position to the ver-

(Testimony of Maurice P. Koch.)

tical position, is there any change in dimension as between the distance between the center line of the outer bar and the center line of the inner bar?

A. I just don't follow that. [375]

Q. I place a ruler upon the center line of the inner bar and the center line of the outer bar, and the reading is approximately $10\frac{3}{4}$ inches; is that correct?

A. From center to center it is approximately about 11 inches; here is the 11 mark right here; approximately 11 inches, $10\frac{3}{4}$ to 11 inches.

Q. Let's move the frame to its vertical position, and again applying a ruler, from the center line of the lower rod to the center line of the upper rod what reading occurs?

A. Well, it is approximately about 13 inches, a little less than 13 inches.

Q. There is considerable elongation in the distance, is there not? A. Yes, that's correct.

Q. When that fixture is arranged with the garment, in moving from the horizontal position to the vertical position will there be a shifting of the garment, or elongation of it?

A. There may be a stretching of the garment to keep it wrinkle-proof.

Q. In your present fixture, as exemplified by Plaintiff's Exhibit 7, you mount the garment bar directly on the frame, do you not? A. Correct.

Q. That eliminates any elongation, does it not?

A. Well, there is a slight stretch there, too.

(Testimony of Maurice P. Koch.)

Q. Does the distance between the center of the two bars remain constant, each being carried with the same frame member?

A. Well, there is a little less shifting than there is here, if that is what you call it.

Q. I am asking you whether you get the elongation that you get with the fixture Exhibit S?

A. It is an entirely different fixture. It operates differently from this.

Mr. Morsell: That is all. [376]

ALBERT KANTROW,

Called by Defendants; Sworn.

Mr. White: Q. Will you state your name?

A. Albert Kantrow.

Q. Where do you reside?

A. 140 Powell street.

Q. What is your age? A. 49.

Q. In what business are you?

A. Luggage.

Q. Have you any stores in San Francisco now?

A. Yes, two of them.

Q. Where are they located?

A. One in the Mission and one on Powell, 2424 Mission and the other, 140 Powell.

Q. Are they retail or wholesale stores?

A. Retail luggage.

Q. How long were you in the luggage business, altogether? A. Since 1908.

(Testimony of Albert Kantrow.)

Q. Were you also in the retail business?

A. No. I was manufacturing up till 1932 but I also had retailing stores at the time that I manufactured.

Q. Did you do any business with the firm of H. Koch & Sons? A. Yes, lots of business.

Q. Do you know Herman Koch, the defendant here? A. Very well, yes.

Q. Did you ever buy any luggage from them?

A. Yes.

Q. Do you remember ever buying luggage from H. Koch & Son with fixtures or garment racks in the luggage of the same kind as shown in Defendants' Exhibit S? A. Yes.

Q. Could you in any way say just when it was, or in what year, that you first purchased any such luggage?

A. Well, about 1925 and 1926 I was buying cases that had two little rods on the top, and then Mr. Koch came out and showed this case, there, to me.

Q. Pointing at Defendants' Exhibit S. Could you approximately fix the date when you first purchased the kind that is in Defendants' Exhibit S?

A. I couldn't say the exact day, but I know it was the month of July, but I couldn't say the date exactly. [377]

Q. You couldn't tell the year?

A. Yes, 1928.

Q. How would you fix the date?

(Testimony of Albert Kantrow.)

A. I remember that because when I gave Mr. Koch the order I asked him to deliver me the cases at my—I moved from Folsom street to Beale street, and I asked him to ship me those cases to 52 Beale street, not to ship them to the old place. That's why I remember I bought them at the time.

Q. Are you certain you moved from Folsom to Beale street? A. Yes, I sure did.

Q. In the summer of 1928? A. Yes.

Q. At the time you gave the order?

A. I know I bought the cases in July, but I told him to ship them in September, shipped to the new place.

Q. What was the name of the firm that you owned at that time? A. That I owned?

Q. Owned in 1928.

A. San Francisco Suitcase Company.

Q. Could you recall about how many of those you ordered on the first order?

A. Well, I think between 150 and 200, but I don't know exactly for sure whether it was 150, or probably 200. I continued buying them right along.

Q. Did you re-order any later on? A. Yes.

Q. Did you ever have any returns on account of the fixtures not working? A. No.

Q. You sold all that you purchased?

A. Yes.

Mr. White: That is all on direct examination.

(Testimony of Albert Kantrow.)

Cross Examination

Mr. Morsell: Q. What is the name of your company and store? A. At the present time?

Q. Yes. A. St. Francis Luggage Shop.

Q. What was it in 1928?

A. San Francisco Suitcase Company.

Q. You have had considerable experience in retailing various types [378] of hand luggage?

A. Yes.

Q. Wardrobe cases? A. Yes.

Q. Some few years ago wasn't it a fact that there were types of luggage on the market in which they had bars mounted at the top of the cover?

A. There is all different kinds coming out, yes.

Q. Types in which they had holding means up here at the top portion of the cover and the bar inserted in it?

A. Yes. There was a little model, I bought them at his place.

Q. It was also very common, the type of fixture known as the Winship fixture; do you recall that, where they had a rather short frame mounted in the top of the cover, that swung out one or two inches——

A. There was a little fixture with a bar at the top. I brought that back from the East, I think, or I bought it back East.

Q. Do you recall such fixtures? A. Yes.

Q. Those Winship, or short bar fixtures didn't

(Testimony of Albert Kantrow.)

have any removable bar at the inner end to give compound folding on them?

A. The dress hung there on top, instead of here. It was here.

Q. Hung straight down to the bottom of the case? A. Yes.

Q. Didn't hang over any other bar? A. No.

Q. How many pieces of hand luggage does your store buy and sell during the course of a year?

A. It depends on the kind of luggage. I guess we sell a thousand a year, anyway; not this case, but we sell all kinds of luggage.

Q. Thousands? A. A thousand or two.

Q. A considerable number? A. Yes.

Q. How many pieces of luggage of the type of Exhibit S did you sell?

A. Well, at that time I was jobbing that stuff. I had no retail stores in 1928. I was manufacturing a cheap line of stuff.

Q. You weren't retailing at that time?

A. No, but I used to manufacture cheap stuff and better merchandise I used to buy from [379] H. Koch & Son. I jobbed it, and also bought from different places.

Q. How many did you job or sell during that period?

A. Pretty hard to tell. I guess I probably sold, I would say at least a hundred a month, sometimes 150; it depends on——

Q. For how long a period?

(Testimony of Albert Kantrow.)

A. I don't know. I guess to about 1931, 1932, somewhere in there.

Q. Well, there must have been quite a number of those cases sold? A. I sold plenty, yes.

Q. Your jobbing, I imagine, is in this particular territory, in the San Francisco territory?

A. Not exactly. I sold all around, all over.

Q. On the coast?

A. As far as the Hawaiian Islands.

Q. You sold quite a number of them throughout this territory? A. Yes, that's right.

Q. Have you any records available showing your purchases?

A. I really don't know. I don't think I have, probably not. If I can find them, it was 15 years ago.

Q. Quite a long time ago?

A. Well, 1928 when I started. I still buy merchandise from them right today.

Q. Today you are selling the type of fixture equipped frame in which the removable bars are right on the inner end of the frame? A. Yes.

Q. As between the type of case you are selling today and the type of case exemplifying Defendants' Exhibit S before us, which would you prefer to sell? A. Well, this case today won't sell.

Mr. Morsell: That is all.

SOL SILVERMAN,

Called by the Defendants; Sworn.

Mr. Trabucco: Q. Where do you reside, Mr. Silverman? A. 115 Justin Drive. [380]

Q. What is your occupation?

A. Luggage manufacturer.

Q. Are you one of the defendants in these cases?

A. Yes.

Q. I show you a suitcase and ask you if you can identify it. A. Yes, that is our make.

Q. Has it a garment-supporting fixture in it?

A. Yes.

Mr. Trabucco: I will offer this suitcase in evidence, your Honor, and ask that it be marked Defendants' Exhibit next in order.

The Court: Admitted and marked.

(The device was marked "Defendants' Exhibit T.")

Mr. Trabucco: Q. On this fixture do you notice any patent number? A. Yes.

Q. Will you kindly examine it and if you find a number will you kindly read it?

A. It is Presto-Lock Corporation, Garfield, New Jersey, patent No. 2,091,931.

Q. Does that number recall to you any particular patent? A. It is under the Levine patent.

Q. Who owns the Levine patent?

A. I buy the fixtures from the Presto-Lock Corporation.

Q. Does the Presto-Lock Corporation own the Levine patent?

(Testimony of Sol Silverman.)

A. I assume that is what it should be.

Mr. Morsell: This is merely hearsay.

Mr. Trabucco: Q. I call your attention to the Levine patent and ask you if it appears on its face as to who the owner is?

A. Abraham Levine, Elizabeth, New Jersey, assigned to Presto-Lock Corporation, Brooklyn, New York.

Mr. Trabucco: Yesterday this patent was introduced into the record for the purpose of identification. I will now ask it be marked as an exhibit in the case. It will take the same number.

(Exhibit I.)

Mr. Trabucco: Q. Are you now selling suitcases having the Presto-Lock fixture in them?

A. Yes. [381]

Mr. Trabucco: That is all.

Cross Examination

Mr. Morsell: Q. Plaintiff's Exhibit 8, which I show you, has been admitted as being a suitcase manufactured and sold by your company prior to the filing of the bill of complaint in this litigation. Will you please examine the fixture in this case and tell me of whose manufacture that is?

A. That is made by the Milwaukee Fixture Stamping Company, called a Rite-Way.

Q. It is made by the Milwaukee Stamping Company? A. Yes.

Q. You don't find any patent marking on this fixture, do you? A. No.

(Testimony of Sol Silverman.)

Q. This fixture in Plaintiff's Exhibit 8 is not made under the Levine patent, is it? A. No.

Q. What difference, if any, is there in principle between the fixture of Exhibit 8, the Milwaukee Stamping Company fixture, and the fixture on Defendants' Exhibit T, the Presto fixture?

A. The only difference in the way we manufacture is that the Presto has a better lock and it hasn't a wooden bar underneath.

Q. It is a matter of substitution of a metal bar at the junction of the frame members for a wooden bar?

A. And also a better locking device for the garment hanger.

Q. You are speaking of the locking device for the trolleys now? A. Yes.

Q. Do you not know, as a matter of fact, that this particular locking device for these trolleys is a subject of the Levine patent, owned by Presto?

A. I don't know.

Q. However, that is the main distinction as between the Presto fixture and the Milwaukee Stamping fixture, is that correct?

A. Yes. [382]

WILLIAM J. LOCKE,

Called by Defendants; Sworn.

Mr. Trabucco: I offer in evidence, your Honor, a drawing illustrating the operation of the Storch

(Testimony of William J. Locke.)

suitcase fixture, the defendants' suitcase fixture, the Wheary suitcase fixture, and the Shoemaker suitcase fixture.

Mr. Morsell: I have to object to this exhibit, your Honor. There has been no foundation laid as yet.

The Court: Lay the foundation.

Mr. Morsell: The purpose of it is what? I refer directly to the showing of the Storch patent. If counsel can show me in any of the views of any of the Storch patents a reproduction corresponding to the showing here, I will remove my objection, but this is a fanciful showing of what might be construed by changing the showing of the Storch patents.

Mr. Trabucco: As a matter of fact, your Honor, this drawing was prepared to illustrate the operation of the various devices disclosed by the patent in suit, and the witness will testify as to the manner of operation of the device as disclosed on the drawings.

The Court: He objects to the foundation.

Mr. Morsell: I would suggest, your Honor——

The Court: Maybe you can get a stipulation.

Mr. Morsell: I have no objection to counsel referring to and showing the defendants' type of case and the Shoemaker type of case, or the Wheary type of case, but if he wants to refer to the Storch [385] type of case I suggest he use the patent, itself.

The Court: Very well, if there is any question about it.

(Testimony of William J. Locke.)

Mr. Trabucco: I would like to admit it for the purpose of identification, your Honor.

The Court: It may be admitted and marked for identification.

(The drawing was marked "Defendants' Exhibit U for identification.")

Mr. Trabucco: I next offer in evidence a case having the embodiment of the Storch structure shown in Fig. 1 of the Storch United States patent.

The Court: Admitted and marked.

Mr. Morsell: I suggest there has been no foundation laid for the introduction of this, as to who made it.

The Court: That is true of all the cases.

Mr. Hursh: Your Honor, so far as the exhibits that were introduced on behalf of the plaintiff are concerned, there were stipulations, the defendants stipulated that they were made by the various defendant companies. Here we have a case that is introduced in evidence that has no parentage whatsoever.

Mr. Morsell: Every exhibit case we have offered in evidence has been thoroughly identified as to its manufacture.

Mr. Trabucco: It is not necessary to identify this, your Honor. The patent identifies it. An examination of the patent will readily indicate that this device is made in accordance with the teachings of the Storch patent.

The Court: The patent is here?

(Testimony of William J. Locke.)

Mr. Morsell: The patent is in evidence. I think the record should show who made this, and when it was made.

Mr. Trabucco: That is not necessary, your Honor. The device speaks for itself. Who made it is not material at all to the issues of this case. [386]

The Court: Proceed, gentlemen.

Mr. Trabucco: I ask that this case be marked Defendants' Exhibit next in order.

The Court: Admitted and marked.

(The device was marked "Defendants' Exhibit V.")

Mr. Trabucco: I next offer in evidence a case made in accordance with the teachings of the Storch patent, particularly the disclosures of Figs. 1 to 4, and I ask that this case be marked as Defendants' Exhibit next in order.

Mr. Morsell: The same objection.

The Court: The same ruling; objection overruled.

(The device was marked "Defendants' Exhibit W.")

Mr. Trabucco: Q. Mr. Locke, what is your present occupation?

A. I am superintendent of a luggage manufacturing concern.

Q. How long have you been engaged in this line of business? A. Since 1910.

Q. Where have you carried on your business?

A. To-day?

Q. No, in the previous years.

(Testimony of William J. Locke.)

A. I have had it in Philadelphia, New York, Chicago, Seattle, San Francisco, Los Angeles.

The Court: Q. Where are you located now?

A. In San Francisco, 446 Fremont Street.

Q. What excuse have you for being located here after making the rounds elsewhere?

A. I was a young fellow, I was looking for adventure, your Honor. I came out here during the time when we had the Exposition.

The Court: Which one, 1915, or the last one?

A. 1915.

Q. You have been here since?

A. I have been here since; I have been here since 1912.

The Court: All right, proceed. You are identified sufficiently for all purposes. [387]

Mr. Trabucco: Q. Were you in business in Seattle? A. Yes.

Q. Around the latter part of the '20s?

A. Yes.

Q. I call your attention to Defendants' Exhibit U for identification, and ask you to explain the operation of the various devices shown on that exhibit. A. This one, right here?

Q. The whole thing.

A. Every one of them, the Shoemaker types—

Q. Yes, all of it.

A. The Shoemaker type was originally made out of two pieces, one cover and one bottom. It has four opposite sides. It has a front and back and two

(Testimony of William J. Locke.)

gusses, what we call in manufacturing, or two ends. The structure of the case, the cover opens and it has a folding bar, or, rather, a fixture which holds a garment which is attached to the hinged side of the cover of the case. It drops down to the bottom of the case, or the body of the case, and it has a roller, or a rod which is bodily removed off the garment holder. Then the garment is folded over the rod, placed back to position near the hinged side of the case, which makes the garment break over the body of the cover. Then the fixture, itself, or the whole U-shaped part is folded over, which makes a secondary fold and folds into the cover of the case.

The Court: Very well, go to the next one. Speed it up. A. Then the Wheary one——

Mr. Trabucco: Before you go to the next fixture, will you kindly explain how the cover is hinged, or the garment-supporting member is hinged to the cover?

A. The garment-supporting member is hinged to the cover by a hinge on each side of the—it is directly hinged to the hinged part of the cover.

Q. How does the garment-supporting member drop into the cover?

A. Do you mean the fixture, itself? It is first rested on the body of the case. Then after the member that carries the garment is placed onto the fixture it swings up into the cover of the case. [388]

Q. Now, go to the next operation to the left of the Shoemaker type, namely, the Wheary type. Will

(Testimony of William J. Locke.)

you explain how the fixture in this device operates?

A. The fixture in this device is at this part of the body, here, connecting near the hinged part of the cover.

Q. Where do you find the pivotal connection of the garment-supporting member with reference to the cover hinge of the Wheary device?

A. The pivoting is in the cover with the hinge, or near the cover with the hinge.

Q. How does the garment-supporting member swing, upwardly into the cover, or adjacent the cover?

A. From the body into the cover of the case.

Q. In all of these devices shown on Defendants' Exhibit U, the full lines indicate the half swinging position of the various garment-supporting members and the dotted lines indicate the fully extended position of the various members. Similarly, the full lines in red indicate the position of the garment on the half swung garment-supporting member, while the broken lines in red indicate the position of the garment when the garment-supporting member is fully extended.

A. That's right.

Q. Proceed with the Storch Fig. 4 type.

A. The Storch Fig. 4 type is bodily connected to the side, or the free end of the cover of the case. That is not removable. It swings out; open it on top in a swinging position where you drape the garments over the rod and fold them into secondary position to the hinged side of the fixture. Then it

(Testimony of William J. Locke.)

has a secondary bar here. When it folds them it takes the secondary fold on the garment and goes into the cover of the case.

Q. Is the garment partially folded preparatory to the device being swung into the cover of the case?

A. It is folded over half; it makes a double fold up there. In other words, it is folded to one [389] side, and it is in two parts, and it swings over in that way, it swings over the secondary rod, which makes it a four-ply fold.

Q. You would call the uppermost part of the fixture the garment-supporting member, would you not?

A. The upper part? I would say it supports the whole garment on the rod——

Q. I am referring now to the upper part of this fixture.

A. The sides, or the bars?

Q. The entire fixture.

A. Yes.

Q. It is the garment supporting member?

A. Yes.

Q. What do you call these members that connect the lower end of the garment-supporting member to the opposite side-walls of the cover?

A. It is the complete structure of the fixture that holds up the upper parts.

Q. Are they ever referred to as connecting links?

A. That's correct.

Q. The first part of the folding operation comprises the half swing of the garment-supporting member, so that the clothes which are suspended

(Testimony of William J. Locke.)

from the uppermost hanger rod engage it on the rod which extends across the pivotal connection of the hanger member and the connecting links; is that not true? A. That's correct.

Q. The succeeding part of the folding operation is accomplished how?

A. The succeeding part, after it is moved from this position, closing up here into the inner, or the side, the free end side, it has a rod here, folds over here, and then this way. It is a slightly complicated structure, comes clear through, across the garment, here.

Q. Referring to the defendants' type shown on the upper right-hand figure, will you explain the similarity between that type of device and the Storch type? A. It is impractical—

Mr. Morsell: That is leading, your Honor.

The Witness: It is impractical. The structure is practically the same. On this type of fixture it has a resting place here, [390] where the Storch type has a different resting place. It folds down into the body, raises up. It has four rods and each one carries a garment, or two garments; folds back in, near the hinged side of the cover, and takes the secondary fold on the other side, the same as this one.

Mr. Trabucco: Q. Where do you find the garment-supporting member in defendants' device?

A. In this position, or each position?

Q. Both.

A. In the upper position the garment supporter

(Testimony of William J. Locke.)

is a rod right at the top of this fixture, takes the garment on the rod, place it back on the fixture.

Q. You are not familiar with the Shoemaker patent, are you? You are referring now, as I understand you, to the garment-supporting means from which—I am speaking now of the garment-supporting member.

A. That is a complete member here, all the way through. It has a rod, two rods, one rod on one side and one rod on the other side, this is the complete fixture.

Q. Referring to Defendants' Exhibit T, I will ask you to point out where the garment-supporting member is in this device.

A. Right here.

Mr. Morsell: For the record, indicating that the particular point is from the inner hinged connection of the top to the extreme outer end.

Mr. Trabucco: Q. May I ask you, what do you call these two bars which connect the outermost part of the garment-supporting member to the opposite hinged walls of the cover?

A. Two side rods, one rod on each side, connecting to the free side of the cover.

Q. Are they ever referred to as connecting links?

A. They are connecting links, connecting links, yes.

The Court: We will take a recess.

(Testimony of William J. Locke.)

(After recess:)

Mr. Trabucco: Q. Taking Defendants' Exhibit W, will you demonstrate the operation of this device?

A. It has the same [391] principle; it has a cover and a body, the same principle as any other garment-carrier for a lady's case. The fixture, the garment-carrier, is attached to the free side of the cover. It is swung out in this position. It has two rests or stays, we call these stays, on each side of the case. It is unfolded in this position. It is arranged so that you are able to place the garments, each garment folded over each rod, illustrating with this paper, taking one garment, one side, another garment slid in over the other one, another garment that way. Or, if you wish to place any more garments you place them like that.

Q. For the purpose of the record, where do you find the garments supported in the demonstration you are now making?

A. The garments supported on the rods, on each rod.

Mr. Trabucco: Let the record show the witness is indicating the uppermost rod.

The Witness: It is supported by these connecting links, as you call them; we in the factory don't call them connecting links. We just call them stay bars.

Mr. Trabucco: Q. Demonstrate how the garments are then folded and the bar projected into the case.

(Testimony of William J. Locke.)

A. It is removed this way, folded over, folded right in this way and folding inside of the cover of the case, in that position, it takes a secondary fold as it goes into it automatically.

Q. When the device is in a loaded position is the frame partially rotated prior to being projected into the case?

A. Yes, it is rotated. It takes a secondary rotation and folds over and goes into the cover of the case.

Q. Will you demonstrate with Defendants' Exhibit T the operation of this device?

A. This device is also attached to the sides of the cover, or the free ends of the cover of the case. It is then re- [392] leased from its holding position on top. It is resting into the body of the case. It is unfolded the second time from the connecting links in a standing position in front of the party who wishes to drape the dress over it. One rod is removed, the garment folded over the rod, it is placed in the same position over it, the garment on the top of the garment-holder, and it is then folded back to its position here, then raised from the body, which takes a secondary fold over the rod extending here and back into the cover of the case.

Q. I notice in Defendants' device marked Exhibit T the connecting links are in a horizontal position when the garment-supporting member is fully extended. Will you kindly show in connection with the Storch patent, Defendants' Exhibit W, how the

(Testimony of William J. Locke.)

device may be used in the same manner as shown in this device; remove the papers. What are you doing?

A. I am removing the multiple bars which carry a multiple amount of garments. I will put that into position where it can carry each one, two, or three garments on the same rod. This is the fixture, the garment-supporter, whichever you may call it, in technical terms. It is, in the same way, connected toward the free end of the cover. It is rotated once, then it is rotated again, the connecting links in an open position, or an extended position, an extended rod. Then the garments are draped over the rod in that position, either one garment or two garments. It is then rotated to the hinged position prior to the secondary fold, and is placed into the cover of the case.

Q. Do you find the same method of operation existing in respect to Defendants' Exhibit T and Defendants' Exhibit W? A. Identical.

Q. Will you also demonstrate how the connecting links may be positioned horizontally in the same manner as the connecting links in Defendants' Exhibit T?

A. I don't understand that question, sir. [393]

Q. How may the connecting links be positioned horizontally?

A. By merely removing this particular set of the stays and putting two supports on the side of the body, of the case, thus being in that position (indicating).

(Testimony of William J. Locke.)

Q. In principle you then have a device practically identical with that of the defendants; is that not true? A. Exactly.

Q. Where did you first see a device similar to the one shown in Exhibit W?

A. In my own factory.

Q. Where and when? A. In Seattle, in 1928.

Q. How did it come to your attention?

A. I was in business at that time, and they came out with the fixture that was horizontally across on one rod, which was called the Winship fixture, and naturally, to improve my line I was always—my eyes were wide open, and when they brought me a repair job from Frederick Knelson in Seattle I happened to notice it and it came to my attention, I looked at it, it was quite an elaborate fixture, it was so extensive, it was elaborate; I looked at the rods which were kind of bent up and I started to fix this, and it struck me at that time to try to improve on it.

Mr. Trabucco: That is all.

Cross Examination

Mr. Morsell: Q. With what company are you connected now? A. Friedberg & Grunauer.

Q. Are you a manufacturer of hand luggage?

A. Yes.

Q. Do you make and sell fixture-equipped hand luggage of the type here under discussion?

A. We do.

(Testimony of William J. Locke.)

Q. Would it be to the advantage of your company to have the Shoemaker patent in suit invalidated?

A. I don't know that it would, no. I only manufacture.

Q. You manufacture and sell?

A. I am only the superintendent. I [394] supervise the shop and the factory.

Q. But your company manufactures and sells fixtures equipped—wardrobe and hand luggage equipped with fixtures of the type under discussion here?

A. Yes.

Q. Will you please re-assemble that model of the Storch patent that you took apart a while ago?

A. Yes.

Q. You, of course, are familiar with the Storch patents, the United States patent and the Austrian patent?

A. I couldn't tell you that. I have never studied the patents.

Q. You testified here as to Fig. 4 being a reproduction of the Storch patents.

A. Fig. 4, not according to the specification; I am not a patent attorney. I don't understand your terms.

Q. You testified as to the showing of Fig. 4 here.

A. Because I remember when I fixed it, I repaired that cover.

Q. Let's get this clear: is Fig. 4, according to your understanding, a showing of the Storch pat-

(Testimony of William J. Locke.)

ent, the top left-hand view on Defendants' Exhibit U? A. Yes.

Q. Is it your opinion that this box, Defendants' Exhibit W, is an exact exemplification of the Storch patent? A. The box?

Q. The box with the fixture in it.

A. The construction of the box, yes.

Q. And the fixture? A. And the fixture.

Q. It is? A. Yes.

Q. Who made this box and fixture?

A. I couldn't tell you; I don't know.

Q. How about the box and fixture of Defendants' Exhibit V? A. I don't know.

The Court: Maybe you can get a stipulation on it. Who made these?

Mr. Morsell: I would like counsel to enlighten me on these. [395]

Mr. Trabucco: Mr. Wheeler had them made, your Honor. He had them made and sent them out from the East.

The Court: Anything else you want to know, Counsel? I am only doing that in the interest of time so we can get along here.

Mr. Trabucco: I might state that the witness here knows nothing about patents. He might have seen the drawings of the Storch patents and so forth, but he has not qualified and is not qualified to go into any technical detail so far as these patents are concerned.

Mr. Morsell: He apparently has qualified as an

(Testimony of William J. Locke.)

expert in this art. He testified to drawings here. He testified to these structures.

Mr. Trabucco: But not as a patent expert.

Mr. Morsell: He testified to these being reproductions of the Storch patents.

Q. I will ask you to refer to the drawings in the Storch United States patent offered in evidence by the defendants and tell me where you find any device in any of those drawings corresponding to the left-hand top view on Defendants' Exhibit U for identification? A. Right here.

Q. You are pointing to Fig. 4 of the patent drawing? A. Yes, Fig. 4.

Q. I call your attention to the fact that the top of the frame in Fig. 4 is a broken line in each instance; it was merely broken so as to avoid the necessity of duplicating and for saving space?

A. I couldn't understand that. I am not a draftsman.

Q. It is a broken line showing there, however, is it not? A. If you say so.

Q. I will refer you to the description of Fig. 4 reading—

The Court: He was just a mechanic brought here?

Mr. Trabucco: That is all.

The Court: When you get into patents you are going afield. I [396] don't view his testimony in that respect.

Mr. Morsell: Well, he has testified—

The Court: If there is any question about that you have the patent here.

(Testimony of William J. Locke.)

Mr. Morsell: Q. Referring to the Storch view of the sketch for identification in Defendants' Exhibit U, Fig. 1 of the United States patent drawing, where do you find justification for the showing of draping the garment as shown in red in the view over the end bar? Is it not a fact that in the drawing——

A. If you open the cover in that position——

Q. Now, please——

A. I don't understand this. If you can open the cover I could tell you exactly, but here on the drawing—if it is open, in the open position, that way, the clothes would hang in identically the same way.

Q. Please confine your answer to my question. In Fig. 1 of the patent do the garments drape down vertically from the hanger bar 2?

A. Vertically means straight down? They hang straight down.

Q. They are not shown as being wrapped over an end bar, are they, as shown in——

A. Not here, but it shows the fold here, the way it is folded there.

Q. It is not shown that way in the patent, is it?

A. Not on this one, not on No. 1.

Q. Referring to Fig. 1 of the United States patent drawing. I refer you to the drawing in the Storch Austrian patent in evidence as Defendants' Exhibit D, and ask you whether there is any showing of garments draped in that patent drawing and in the manner disclosed in Fig. 4, sketched in Exhibit U?

(Testimony of William J. Locke.)

A. Right here. This is the bar, comes this way, and then the secondary—takes the fold there.

Q. What is the reproduction of the line marked here by the bar 26 [397] in Fig. 2 of the Storch Austrian patent?

A. That is a rod, here, clear through to the connecting links.

Q. And a garment draped over that bar, is it not, hanging straight down?

A. I don't know. I couldn't tell you off-hand whether that is a garment there. It could be a garment.

The Court: Supposed to be?

Mr. Trabucco: Supposed to be.

The Witness: Could be a garment there.

Mr. Morsell: Q. If it is a garment it is hanging straight down, is it not, and not draped over any other—

A. In this position, yes, into the body of the case.

Q. I again refer you to Fig. 1 of the drawing of the Storch Austrian patent, and ask you whether the lazy tongs structure is shown as being folded downwardly—

A. I couldn't tell you anything about drawings. I don't understand drawings. I understand it has many folds in there, the lazy tongs come together, whether it is on the front or back I couldn't tell you from the drawings.

The Court: We don't expect you to do anything that you can't do.

(Testimony of William J. Locke.)

The Witness: It shows two here, one inside here and one on the outside. What are the outer lines supposed to be?

Mr. Morsell: A showing of the lazy tongs structure close up and on each side arm 28—does that appear—

A. I couldn't tell you. I wouldn't know how to answer that.

Q. Do you find any showing in the drawings of the Storch Austrian patent corresponding at all to Fig. 4 of the sketch for identification, Defendants' Exhibit U?

A. Yes. These, here, that way, in that position.

Q. Are you referring to Fig. 2 of the Storch patent?

A. This little connecting link and the other link on the top making this [398] up into the horizontal position.

Q. I am asking you to refer to any view in the Storch Austrian patent in its entirety and tell me whether the fixture there disclosed is similar to the showing in Fig. 4 of Defendants' Exhibit U for identification?

A. It is the same construction this way with the addition of the lazy tongs.

Q. Fig. 2 of Storch shows the lazy tongs structure, does it not?

A. No. It shows the complete attachment to the three sides of the cover extending and has like an elbow. Then from that second link the connections are lazy tongs.

(Testimony of William J. Locke.)

Q. It is lazy tongs up to the second link?

A. Yes.

Q. And does Fig. 4 in Exhibit U have a lazy tong structure shown? A. No, not here.

Q. I again refer you to the drawings in the Storch United States patent and the Storch Austrian patent, and would ask whether these patents disclose any suggestion of a removable connection for the lazy tong frame such as you have described and operated on Defendants Exhibit W, so the lazy tongs may be removed from the main frame. A. No, I don't see it there.

Q. In the structure of Defendants' Exhibit W, when the lazy tongs is moved forwardly in a clockwise direction, the model as constructed has, I believe, means which hit the end of the arms to prevent further movement and forward collapse of the lazy tongs; is there any justification for that arrangement in the showings of the Storch United States or Storch Austrian patents?

A. I don't know, I couldn't tell.

The Court: You don't see it there?

A. I don't see anything here with the exception of dots and lines.

Mr. Morsell: Q. There is nothing that you see there to prevent the forward folding of the lazy tong construction, is there, in a [399] clockwise direction?

A. I couldn't testify to that. I can't read blueprints, your Honor.

(Testimony of William J. Locke.)

Q. Is there any showing in either of the Storch patents wherein the main frame is brought down horizontally over the cover section of the case?

A. It doesn't show here.

Q. Does it show on either of the patents?

A. I couldn't tell you. I don't know whether they have that provision. It has a stop on here, on the side.

Q. Yes, 34, which prevents that going down, does it not?

A. Prevents it going down clear into the case, dropping inside the case.

Q. It prevents it from going any further than this 45 degree position because of it hitting the stop right there?

A. I couldn't tell whether that is 45 degrees or 90. I know it comes to a position opposite that stay.

Q. There is a stop 34 shown in the Austrian patent, is there not?

A. What 34 stands for, I don't know. It says 34 here, but whether it is the stop, I couldn't tell you.

Q. The translation of the Storch patent says, I direct your attention to this statement: "The supporting stirrup, 28"—that is the frame arm corresponding to this member on the model—"of the lazy tongs is secured in this position"—meaning a position swung upwardly to a certain extent—"by the connecting bolts 34 of the cover-holding straps 35." In other words, that describes an arrangement where these stays hit the bolt, just as you have it in

(Testimony of William J. Locke.)

your model, and it prevents this from dropping down into a horizontal position; is that correct?

A. The way you explain it it is correct.

Q. In your demonstration of the models allegedly exemplifying Storch patents, Defendants' Exhibits W and V, you placed pieces of paper over the transverse bars and then wound them to some of [400] the other bars of the lazy tongs structure. Do you find any support in the showing of either of the Storch patents for packing garments in that manner? A. Not in this one.

Q. Isn't it a fact that the showing in the Storch patent merely indicates the garment as being mounted on a bar and draped straight down?

A. I have to get acquainted with these drawings. You say this shows a supporting bar or rod holding it in position to drape it, the same as here?

Q. I am speaking of the manner in which the garments are draped around here; don't they hang straight down?

A. It is not necessary; it all depends which way you hang them. If you hang them straight down they hang that way.

Q. How does it show in the patent drawings?

A. In the patent drawings they show it straight down on this one, here.

Q. Now, in these models of the Storch patents none of the bars are removable, are they?

A. There is one that is entirely removable.

Q. Well, not for the purpose of taking it entirely out to load it with garments, is it?

(Testimony of William J. Locke.)

A. No.

Q. In loading this fixture with garments it is rather a complicated procedure, is it not, when you have to——

A. On this especial model it is.

Q. Well, on both of these models.

A. No, not on this one. It is a very simple device——

Q. To manipulate a fold in that case?

A. Manipulation, it all depends on who manipulates it.

Q. Would you care to manufacture and sell and offer to the public devices such as Defendants' Exhibit W and Defendants' Exhibit V?

A. This is a replica of a fixture, the same as the first aeroplane that was built.

Q. Will you please answer the question? [401]

The Court: Wait a minute. I think that is a mighty good description from my viewpoint. This is comparable to the first aeroplane which was built, isn't it?

The Witness: If you would bring me an aeroplane that was built in 1911 and bring one today I could absolutely tell you today's is better.

The Court: That is what I had in mind. I think any woman would have difficulty in either of these. I think sometimes we go afield and we get too much detail that don't serve any useful purpose. Let these various objects speak for themselves.

Mr. Morsell: Will you please take an actual garment, will you exhibit the manner of packing this Storch model W with an actual garment?

(Testimony of William J. Locke.)

A. Do you want me to explain that, your Honor?

The Court: No. My observation will be sufficient for all purposes. [402]

Afternoon Session

WILLIAM J. LOCKE

Recalled.

Cross Examination

(Resumed)

Mr. Morsell: Q. Mr. Locke, when was the first time that you saw these two exhibits, Defendants' Exhibits W and V, alleged to exemplify a showing of the Storch patent?

A. When I have seen them?

Q. Both of these two boxes as they are in the court-room today.

A. Approximately five or six days ago.

Q. That was the first time? A. Yes.

Q. They came from some other source?

A. I presume so.

Q. When did you first see this chart, Defendants' Exhibit U? A. Right now.

Q. Today was the first day you saw that?

A. Yes.

Q. I believe you testified this morning that your work was more in the practical manufacturing line and you are not exactly familiar with drawings; is that correct?

A. Not exactly; plain drawings I can under-

(Testimony of William J. Locke.)

stand but not anything that is in technical drawings.

Q. Did you have any difficulty in understanding the drawings on Defendants' Exhibit U, on your direct examination this morning?

A. I can in plain; no, I haven't in plain.

Q. But the drawings in the patent copies that I showed you, you had some difficulty in understanding them, is that right?

A. Yes, because they have writing on them and I don't understand writing, the writings, what is written in technical form.

Q. Well, the drawings, themselves, in the patents, do you understand what they show?

A. In straight lines, I do.

Q. I show you a copy of Wheary patent 1,799,877, which is in evidence as Defendants' Exhibit F. Does that patent show a well at the back of the body section of the case into which garments drape from the hanger frame?

A. Well, I am familiar with all these [403] fixtures and I know where it is located; it is located in the body of the case, here.

Q. Does this drawing, Fig. 1 of the Wheary patent, show a well in the bottom of the case into which a lower end of the garment drapes?

A. Explain that. Do you mean of all the garments hanging inside here?

Q. Inside the little compartment formed by a division in the back of the body of the case.

(Testimony of William J. Locke.)

A. Correct.

Q. There is a division in the body of the case for a well? A. Yes.

Q. And the loose end of the garment hangs into that well?

A. Yes, if it is straight. It shows here in the well.

Q. As it is shown in the patent, itself?

A. Yes.

Q. Is there any such showing in the lower left-hand view allegedly exemplifying the Wheary structure in Defendants' Exhibit U?

A. No, it doesn't show here.

Q. So in that respect it doesn't correspond with the patent, does it?

A. The drawing, you mean; this drawing, here?

Q. Yes. A. No.

Q. I say in that respect—

Mr. Trabucco: If the Court please, that drawing is not admissible for the purpose of showing the structure in these prior art patents. It merely shows a skeletonized view of the operating parts of the device.

Mr. Morsell: Q. Have you studied the Shoemaker patent here in suit? A. No.

Q. Have you read and studied the Wheary patent exemplified by the lower left-hand view in Exhibit U? A. No.

The Court: He has not studied any of the patents at all. This man is simply a mechanic.

(Testimony of William J. Locke.)

Mr. Morsell: I understood that, your Honor, but he testified this [404] morning to familiarity with these structures and drawings.

The Court: Only the drawings there and straight lines. He didn't know the technical terms. He didn't attempt to construe any of the claims or anything else. I think we are wasting a lot of time with this witness so far as what is going to be useful from my point of view of getting the merits of this case. I think it is a waste of time.

Mr. Morsell: I wish to make a motion at this time that Defendants' Exhibits W and V and U, the two box exhibits and the chart be stricken on the ground of no proper foundation having been laid for same, the witness having admitted there are discrepancies between the showings in these exhibits and the patents.

The Court: I am going to allow them to stay in. They speak for themselves.

Mr. Morsell: My only concern is that in view of the difference between these devices and the patents I am going to have to spend considerable time with my expert in offering a record on that.

The Court: You may do whatever you see fit to do. I tried to indicate my own state of mind in relation to that testimony, as to the value of it, aside from observing him and making comparisons.

Mr. Hursh: If your Honor please, what we complain of is the fact these structures are not built according to any of the patents in suit. They were

(Testimony of William J. Locke.)

introduced by Mr. Trabucco as exemplifying the Storch patents, but if your Honor wants to see what the Storch patents teach you can turn to the patents. We don't like to have physical exhibits that are in any way changed from the original structures.

The Court: That is a matter of degree. That is a matter for the Court to determine so far as it can. [405]

Mr. Trabucco: As a matter of fact, these devices are made in accordance with the Storch patents.

Mr. Hursh: There are a number of additions.

The Court: There is no doubt about a number of additions. I have observed that when they were presented. If they are not material they will go out, but they are here, and it is a matter of the weight of the testimony. The Court doesn't necessarily have to accept everything that is presented here.

Mr. Trabucco: If the Court please, I would like to read a few excerpts from the patents, themselves.

The Court: I suggest we get through with this witness on the stand.

Mr. Morsell: I have finished with the witness, your Honor. [406]

IRVING C. ROEMER,

Recalled for Plaintiff in Rebuttal (previously sworn).

Mr. Morsell: Q. You previously testified in this case, Mr. Roemer, on behalf of the plaintiff?

A. Yes.

Q. Are you familiar with and have you studied the United States patent to Storch, introduced in evidence by the defendants, and the Austrian patent to Storch, also in evidence? A. Yes.

Q. Will you please refer to your patent copies of those two patents and state first whether or not the illustration in Defendants' Exhibit U finds its basis, in your opinion, in either of the Storch patents, and also mention the mode of dress-draping covered by those patents.

A. I think in Defendants' Exhibit U the illustration which purports to be of the Storch patent is unjustified in view—

The Court (Interrupting): Is that the Austrian patent?

A. I don't know, sir, because—I don't know, I am referring to [408] either the Austrian or the United States patent, I don't know which one the drawing is taken from. I don't find justification in the United States Storch patent, either the Austrian or the United States—

The Court: Either one?

A. In neither of them.

Q. All right. Assign the reason.

(Testimony of Irving C. Roemer.)

A. For the disclosures of Exhibit U for the patent doesn't disclose a single frame. It does say more than one, one of those frames may be used. I will refer to the frame that is pivoted from the end of the arms, the frame that carries the draped garment in red on Exhibit U, and the Storch patent definitely prohibits the swinging of the frame in the manner that it is shown in this view. There, of course, the drawing is made to indicate that a garment is draped as the garment lies over a bar at the outer end of the swinging frame arm and then a bar is folded inwardly so the garment is secondarily draped at another point; that is, at the outer end—that would be folded all the way in and the entire thing would then be folded up into the cover, whereas in the Storch patent the folding of this member which swings at the end of the supporting member is in the opposite direction; it must be in the opposite direction in that Storch United States patent, as well as the Storch Austrian patent, as there is an arrow which indicates the manner of folding and unfolding. It is true in the Austrian patent there is a reference to swinging in either direction, but the Austrian patent says that this has been—when the frame is folded up in the top this portion, the swinging portion, which is, in fact, a lazy tongs arrangement, and in a single frame, as shown here, swings upwardly first, and it clearly illustrates that and says it may swing in one direction, not meaning that it can be swung

(Testimony of Irving C. Roemer.)

out or back, but the direction is that indicated by the arrow in the drawing. So this drawing, here, works exactly opposite of the teachings of either of the patents. [409]

Furthermore, there are means in the Storch patents that prevent the swinging of this in the direction it is indicated to swing in this exhibit. There are straps which limit the swinging movement when the lazy tongs are brought out, and they are supported by a strap which is fastened between the top of the body of the suitcase and the strap end of the lazy tongs and balances in that position. It calls the strap a tension member, and another arm is a compression member, so that that strap positively prohibits functioning of the device in the manner that it is purported to function in this drawing.

The strap I refer to is that indicated at 20 in the United States patent, the arrows in Fig. 1 of the patent, and the arrow is also shown in the other.

Mr. Morsell: Q. In the Storch patents to which you refer, is there any indication in the specifications that that strap is detachable or removable?

A. None, whatsoever.

Q. As long as it is attached any folding operation must of necessity be one toward the body section of the case, is that true?

A. That is correct.

Q. Have you any comment to offer with respect to whether or not there is any basis in the Storch

(Testimony of Irving C. Roemer.)

Austrian patent in the exemplification as to a showing of a pivotal structure which omits the complicated lazy tongs mechanism?

A. No. The Austrian patent shows various forms of lazy tongs and other folding arrangements, but in all of the drawings of the Austrian patent it has a complicated set of bars more or less in every instance like a lazy tongs which folds and unfolds at the end of the arms which support them.

Q. Have you any further comments to offer with respect to the comparison between Defendants' Exhibits W and V and the Storch United States or Austrian patents in their structure and mode of operation? [410]

A. I think that Exhibits W and V are not true to the patent from which they are supposed to be taken, any more than the drawing is. They do have a lazy tongs arrangement on them and as long as that remains on them they are true to that extent, but they make the lazy tongs arrangement fold in the wrong way, and in these exhibits lazy tongs, or garment-supporting members are made to fold into the cover of the box. In Storch's patents these lazy tongs would be closed; after they have been closed they swing around in this manner, here. The assembly that prevents it swinging in this model certainly is not right, because the Storch patents definitely teach they must swing in this manner (indicating). The patent drawings are shown here,

(Testimony of Irving C. Roemer.)

so if you try to swing these in this manner they would hit against this cover. Outside of putting a strap down here, I don't know whether this is supposed to represent a strap, but it isn't means that is shown in the patents. In the Storch patents it is brought around and around, this direction, and then there is a strap here which prevents it. There is evidently in the patent a piece of leather or something which prevents it going any further. That is the way the device gets support. The patent calls it a tension member, and this a compression member, it balances between those two points. When you want to fold it up it is folded and swung around in that manner. You can't swing this model—swung into place exactly backward from the way the model works. In my estimation this model certainly doesn't show anything like the Storch patents.

Q. In the Storch patents is there any justification for the various removable connections here appearing on Exhibit W which permits its being disassembled so as to result in merely an inner and an auxiliary frame?

A. None, whatsoever.

Q. None shown there in any type in either of the Storch patents?

A. No, no detachable parts on it at all. [411]

Q. In the Storch patents, are any of the rods upon which the garments are draped detachable?

(Testimony of Irving C. Roemer.)

A. No, no detachable rods. I might make reference there, there are in certain instances some auxiliary parts shown in these models which are called pants hangers and hose stretchers. They are sort of frames or reels to which an article of clothing may first be wound and then snapped into place on this lazy tong and then the lazy tong folds up in the regular manner, but none of the rods that are shown in these models, none of the same rods in the Storch patents would be removable rods.

Q. Are you familiar with and have you studied the various patents offered in evidence by the defendants herein, either for purposes of alleged anticipation or showing the state of the art?

A. Yes, I have.

Q. I would like you to kindly refer to the Von Ohlen patent first, one of the defendants' exhibits, and discuss whether in your opinion that patent compares in any way with the Shoemaker patent in suit and the two accused structures of the two defendants.

A. I fail to see any connection between the structure of this Von Ohlen patent and the structures that are in evidence in this suit. In the first place, the Von Ohlen patent relates to a wardrobe trunk. It is a rather large trunk, as shown in the drawings, and one that assumes a vertical position, and when opened hinged in two parts, and snaps between the two hinged parts. There is a framework

(Testimony of Irving C. Roemer.)

or gate that swings out and occupies the position between those parts and a horizontal-extending bar upon which hangers may be placed. When the trunk is closed the hanger and the clothing which might be hung on it occupies both halves of the trunk. There is no need nor means for carrying the trunk in the position that a suitcase is carried, and if the trunk were so carried the garments supported by these hangers would simply be in a terribly mused condition unless [412] they were very securely tied in place. It has none of the elements of the invention of the patent in suit. It is an entirely different character of device.

Q. You are familiar with the claims of the Shoemaker patent which are relied on in this suit?

A. Yes.

Q. Will you state whether or not the Von Ohlen patent has a garment-supporting means removably carried by the hinged side of a supporting member in the frame as positively required by Claims 4, 8, 10, 11, 12, 19, 23, and 24 of the Shoemaker patent in suit?

A. No. The garment-supporting means of the Von Ohlen patent are conventional clothes hangers, and they hang on the bar on this gate, but not in accordance with the claims in the patent.

Q. In the Von Ohlen patent is there a garment-supporting member or bar for the primary folding of a garment and a folding edge on the free end of a supporting member or frame on which gar-

(Testimony of Irving C. Roemer.)

ments are secondarily folded, as required in relied-upon claims 8, 10, and 11 of the Shoemaker patent in suit?

A. No. In the Von Ohlen patent the garments hang very much as they do in a closet or wardrobe. There is implicated no fold in the garment.

Q. In the Von Ohlen patent is there any disclosure of means of retaining the supporting member in packed position in the cover of the case with the garment supported in parallel relationship to the normal carrying position of the luggage required by Claim 10 of the Shoemaker patent?

A. No, there isn't.

Q. In the Von Ohlen patent is there a garment-supporting member connected to the hinged side of the cover portion and adapted to be hinged to a horizontal position over the body portion when being packed?

A. No, there isn't. Von Ohlen's trunk doesn't assume that sort of position and it wouldn't operate in that manner if it was in that sort of position.

[413]

Q. The last element being required by Claim 11 of the Shoemaker patent. In the Von Ohlen patent is there a primary and secondary folding means for supporting garments on the supporting member in parallel relationship to the normal carrying position required by Claim 12 of the Shoemaker patent?

A. No.

(Testimony of Irving C. Roemer.)

Q. Will you now refer to the Boden patent offered in evidence by the defendants and make any comments you may want on it, as to its applicability to Shoemaker's patent in suit, and to the two structures of the defendants herein contained.

A. The patent to Boden, No. 935,958, is directed to a display packing case, a case with a glass or transparent top used for packing garments so that they may be observed through the glass. It is a type of case common for packing burial shrouds where people want to see the garments laid out in a position where they may be easily viewed and one of several garments selected. The case opens like an ordinary suitcase and then it has two transversely-extended bars around which the garment is wound, or, you might say, between which the garment is woven or draped to extend across the cover. They are carried on little packing arms that may be swung up and down. In placing the garment in there it must be laid over the bar. There is no arrangement whereby a garment may be conveniently packed, or automatically folded. It is not a suitcase. It has not got a garment-supporting member that carries a removable hanger bar or anything of that sort.

Q. Does the Boden patent illustrate a cover hinged to the body of a piece of luggage?

A. No, it does not.

(Testimony of Irving C. Roemer.)

Q. Does it illustrate or disclose a garment-supporting member hingedly connected to the hinged side of a case, as required in a number of relied-upon claims in the Shoemaker patent in suit?

A. It doesn't.

Q. Is there any suggestion in the Boden patent of a garment-supporting [414] member connected to the hinged side of the cover and adaptable to be hinged to a horizontal position over the body portion when being packed?

A. No, there is not.

Q. Is there any suggestion of a garment-supporting member having a hinged side connected to one side of the case and the other side adapted to swing to a position adjacent to the other side of the cover?

A. No, there isn't.

Q. In the Boden patent is there any suggestion of a disclosure of a means for retaining the supporting member in packed position in a cover with the garments supported in parallel relationship to the normal carrying position of the luggage?

A. No.

Q. Will you now please refer to the O'Neill patent, No. 1,150,058, which has been offered in evidence by the defendants, and discuss the applicability or lack of applicability of this patent respecting the Shoemaker patent in suit, and the defendants' structures here accused?

A. The patent to O'Neill is directed to a dress suit case, or what I might term a piece of luggage.

(Testimony of Irving C. Roemer.)

It is a piece of luggage in which there are two hinges between three relatively-hinged elements so that the luggage may be completely opened up and laid in a flat position, as contrasted to luggage where the case is raised to a vertical position and held in that position by stays.

The O'Neill luggage can be opened up to a perfectly straight position to lie flat on the floor, or may be hung up by its handles. The garments are placed in the O'Neill case on regular garment hangers, the conventional clothes hanger, and they hang on a bar shown at 23 in Fig. 1. With the O'Neill device hanging up on a horizontal bar, the garments hang as if they were in a closet. When it is time to close the luggage, when the garments are all in, the two disposed hinged sections of the luggage are swung up to form a box and encircle those garments; the front portion of the garment is hanging and [415] the intermediate portion of it lies flat on the bottom of the case, and the latter part of it, which would be the tail of the coat or the cuffs of the trousers are standing up vertically, so when you pick up the case to carry it the vertical position would settle down into the bottom of the box.

In the O'Neill case there are what may be termed dividing members or panels, one hanging down in front of the upper part of the garment, the other extends up in front of the lower part of the garment when it is draped in the case, and they are

(Testimony of Irving C. Roemer.)

pushed apart to compress the garment in place and leave a space in the intermediate portion of the luggage within which other articles may be packed.

Q. In the O'Neill patent do you find a garment-supporting member hingedly connected to the hinged side of the cover as required by claims 4, 8, 10, 11, 12, 19, 23, and 24 of the Shoemaker patent in suit? A. No, I don't.

Q. In the O'Neill patent do you find a garment-supporting member connected to the hinged side of the cover portion and adapted to be hinged to the horizontal position over the body portion when being packed? A. No, I don't.

Q. Will you now please refer to the Shroyer patent offered in evidence by the defendants, this patent being U. S. patent No. 1,200,248, and discuss this patent in connection with the Shoemaker patent in suit and the defendants' accused structures?

A. The patent to Shroyer is another patent for a trunk which provides for carrying garments in the trunk by the use of a frame which may be swung upward out of the body of the trunk and which includes a portion upon which clothes hangers may be hung. It is for convenience in packing a trunk and in unpacking a trunk to hang a garment on these hangers with the frame swung up to a vertical position so they can be hung as if they were hanging in an ordinary closet or [416] wardrobe. When they are all placed in position they are strapped

(Testimony of Irving C. Roemer.)

into position and the framework is placed in front of them, straps brought down to keep them from being jostled around in the trunk, and the entire framework with the clothes packed in it is swung back down into the trunk, and that is about all there is to it. There is no provision for folding the clothes in any particular manner. They are just carried on clothes hangers.

Q. Those hangers are at the end of the frame?

A. The hangers are at the upper end of the frame when it is raised to its vertical position. It is pivotally connected with the body of the trunk.

Q. Under any circumstances would those hangers ever become disposed adjacent the hinged connection of the frame of the piece of luggage?

A. No, they do not.

Q. In the Shroyer patent do you find a garment-supporting member hingedly connected to the hinged side of the cover as specified in a number of the relied-upon claims in the Shoemaker patent?

A. No, sir, I do not.

Q. Do you find a garment-supporting means or removable bar hangers removably carried by the hinged side of the garment-supporting member?

A. No, I do not.

Q. Do you find garment-supporting means for the primary folding of garments and a folding edge on the free side of the supporting member on which garments are secondarily folded in the Shroyer patent?

A. No, I do not.

(Testimony of Irving C. Roemer.)

Q. Do you find in the Shroyer patent any means for retaining the supporting member if placed in the packed position in the cover of the case with the garments supported in parallel relationship to the normal carrying position?

A. No. It is disposed in the body of the case and the garments are in a different position.

Q. Do you find a garment-supporting member connected to the hinged [417] side of the cover and adapted to be hinged to a horizontal position over the body portion when being packed?

A. No.

Q. Do you find in the Shroyer patent primary and secondary folding means for supporting garments on the supporting member in a parallel relationship to the normal carrying position of the luggage? A. No.

Q. Will you now please refer to the Simmons patent offered in evidence by the defendants herein, being United States Patent No. 1,208,221, and discuss this patent in connection with the Shoemaker patent in suit and the structures of the defendants herein complained of?

A. The Simmons patent is directed to a packing device similar to what we just referred to as a suit box, a pasteboard suit box of the type that tailors use to pack a suit or garment, or of the type used by dry cleaners, and this box is made with pasteboard flaps, and it may be used to arrange clothes in the box in the manner that shirts come home

(Testimony of Irving C. Roemer.)

from the laundry, to retain a shirt in an ironed condition. It is not a suitcase. It is not intended for use as a suitcase. It could not be used as a suitcase. It is a temporary packing box of pasteboard upon which the garments are hung to prevent them from being wrinkled. There is no hinged cover on it, no removable hanger rod.

Q. In the Simmons patent before you, in addition to the lack of the hinged cover, do you find this patent lacks the garment-supporting member hingedly connected to the hinged side of the cover?

A. Yes, it does. It does lack that.

Q. Do you find in the Simmons patent a garment-supporting means removably carried by the hinged side with a supporting member or frame?

A. I do not.

Q. In the Simmons patent do you find a means for retaining the supporting member or frame in packed position in the cover with the garments supported in parallel relationship to the normal [418] carrying position of said luggage?

A. I do not.

Q. In the Simmons patent do you find a garment-supporting member or frame having one side connected to the hinged side of the cover and the other side adapted to swing to a position adjacent to the other side of the cover?

A. No, I do not.

Q. Will you please refer to the United States Patent to Fasel & Garland, offered in evidence by

(Testimony of Irving C. Roemer.)

defendants, this being United States Patent No. 1,382,964, and discuss this patent in connection with the Shoemaker patent in suit, and the defendants' structures herein complained of?

A. The Fasel & Garland patent is for a suitcase and it relates to removable hanger bars mounted within the free end of the cover section of the suitcase. When the case is opened the bars are arranged at the upper end of the cover and the cover being in a vertical position; these bars may be removed to have a garment draped over them and placed back in the cover again very simply. What we have been referring to here as hanger bars or hanger rods. The patent shows two of them removed from the cover, and the patent also shows some forms, what appear to be a frail material like paper or pasteboard, or, perhaps, a thin piece of wood for facilitating the draping of a garment over these bars. The garment is placed on these forms and then draped over the bars and then placed in the cover of the suitcase.

Q. Will you please examine Defendants' Exhibits S and L and refer to the individual bars in these cases and sockets mounted therein and state whether or not those sockets and bars, if used in the upper end of the suitcase cover, would correspond to the showing in the Fasel & Garland patent?

A. Yes, they would, with the exception that the sockets in the Fasel & Garland patent are of a dif-

(Testimony of Irving C. Roemer.)

ferent type mechanically. If the sockets in this Exhibit S [419] were removed and placed in the upper part of the case rather than the lower part where we find them the arrangement would be exactly the same as that shown in the Fasel & Garland patent. The patent shows two bars in the upper part of the case for holding this single bar, one above the other.

Q. Is it your opinion the Fasel & Garland patent teaches using a removable bar in the upper end of a suitcase cover? A. Yes.

Q. The sockets and bars of these defendants' exhibits referred to, being S and L, could be assembled in a case in the upper end of the cover as taught by Fasel & Garland?

A. Yes, they could.

Q. In the Fasel & Garland patent do you find a garment-supporting member hingedly connected to the hinged side of the cover? A. No.

Q. As required by a number of Shoemaker claims in issue? A. No.

Q. Do you find in the Fasel & Garland patent a garment-supporting means or bar for effecting the primary fold of a garment carried over the folding edge on the free side of a supporting member for effecting secondary folds in the garment?

A. No.

Q. In the same patent do you find any means for retaining the supporting member in packed position in the cover of the case with the garments

(Testimony of Irving C. Roemer.)

supported in parallel relationship to the normal carrying position of the luggage? A. No.

Q. In the Fasel & Garland patent do you discover any primary and secondary folding means for supporting garments on supporting members in parallel relationship to the normal carrying position of the luggage? A. No.

Q. Will you please refer to the Tiedemann patent offered in evidence by the defendants herein, this being United States Patent [420] No. 1,435,673, and discuss that patent in connection with the Shoemaker patent in suit and the defendants' accused structure?

A. The Tiedemann patent is another patent that is directed to a box for garments but is another which relates to one of the type of boxes used for displaying dresses, coats, burial shrouds or like articles. It is an open type of box arranged so that the garments disposed in it will be on display. There is a panel around which one end of the garment may be wrapped so the main front portion of the garment is disposed on top of that panel.

There is a hanger screwed to one end of the box, itself, or, rather, supported from a screw hook in one end of the box. The garment is draped on that hanger and one end of the garment is wound around the opposite end of the panel and one end of it is concealed beneath that panel. It is not a piece of luggage in any sense of the word, and it does not provide for double folding or draping of the garments.

(Testimony of Irving C. Roemer.)

Q. Does the Tiedemann patent disclose a cover hinged to the body of a wardrobe case?

A. No, it doesn't disclose any cover.

Q. Does it disclose a garment-supporting member hingedly connected to the hinged side of a cover?

A. No. The garment panel, the panel on which the garment lies in this is an independent removable piece. It is not hinged to the box or any part of it.

Q. Does it disclose a garment-supporting means in the form of a bar or hanger removably carried by the hinged side of a supporting member?

A. No.

Q. Does it disclose a garment-supporting member having one side connected to the hinged side of the cover and the other side adapted to swing to a position adjacent to the other side of the cover?

A. No.

The Court: We will take a recess for a few minutes. [421]

(After recess):

Mr. Morsell: Q. Will you please refer to the Langmuir patent offered in evidence by the defendants, United States Patent No. 1,698,848, and discuss this patent in so far as it may or may not pertain to the Shoemaker patent in suit, and the defendants' accused structures?

A. The Langmuir patent is directed to a luggage but discloses luggage made in the form of a trunk

(Testimony of Irving C. Roemer.)

rather than a suitcase. As a matter of fact, it is a wardrobe trunk that is shown. One-half of the trunk hinges away from the other, the trunk normally resting in a vertical position, and there is provision for hangers in the hinged half of the trunk. The so-called trolleys or extensible bar is shown so that clothes may be hung on those bars when the garments are hung on the hangers when the trunk is closed. After it is closed there is a panel 17 shown in Fig. 2 which folds upward so as to engage the lower part of the garment and tuck it up into the space provided for carrying garments.

Q. Does the Langmuir patent disclose a garment-supporting member hingedly connected to the hinged side of the cover?

A. No, it doesn't.

Q. Does it disclose a garment-supporting means removably carried by the hinged side of a supporting member? A. It doesn't.

Q. Does it disclose means for retaining a supporting member in packed position in the cover of a case with the garments supported in parallel relationship to the normal carrying position of the luggage? A. No.

Q. Does it disclose a garment-supporting member connected to the hinged side of a cover of a luggage case and adapted to be hinged to the horizontal position over the body portion when being packed? A. No, it doesn't.

Q. Does it disclose a garment-supporting member having one side [422] connected to one side of

(Testimony of Irving C. Roemer.)

the cover and the other side adapted to swing to a position adjacent to the other side of the cover?

A. No, it doesn't.

Q. Will you please refer to the Lengsfeld United States Patent offered in evidence by the defendants, either the original patent or the re-issue, the showing is the same, and discuss the disclosures in this patent with reference to the Shoemaker patent in suit, and the accused structures?

A. The Lengsfeld patent is directed to a garment carton and is another of those patents which show a pasteboard suitcase. Cardboard stiffener members are used interiorly of the carton to retain the garments in place. It is a carton. It doesn't have a hinged cover or a telescopic cover like the ordinary suit box, pasteboard suit box.

Q. Is there an indication of a garment-supporting member hingedly connected to the hinged side of the cover? A. No.

Q. Is there a garment-supporting means or hanger removably carried by the hinged side of the supporting member? A. No.

Q. Is there in the Lengsfeld patent a means for retaining the supporting member in packed position in the cover with the garments supported in parallel relationship to the normal carrying position of the luggage? A. No.

Q. Is there any showing of a supporting member which connects to one side of the cover and is adapted to swing to the position adjacent the other side of the cover? A. No.

(Testimony of Irving C. Roemer.)

Q. Please refer now to the Winship patent offered in evidence by the defendants, this being United States Patent No. 1,728,223, and discuss this patent in connection with the Shoemaker patent in suit, and the accused structures of the defendants.

A. Winship patent is directed to a wardrobe hat box, or a box similar to several suitcases in evidence here. That is similar in its [423] general shape. It has a body member and a hinged cover member which stand in a vertical position when it is opened and at the upper portion of the cover member when it is open there is a bar upon which a garment may be draped. This bar is carried on little brackets which are pivoted within the upper or free end of the cover so it can be swung out to a more or less convenient position for draping the garment, and the garment is draped over this single bar, and in the event that the garment is too long to be retained entirely in the cover, which it would necessarily be the case of an ordinary lady's dress, for example, the ends of the garment hang down into the body portion of the box, but there is provided a special well for that purpose. In other words, there is a partition in the box to maintain separately a space for the ends of the garment to gather into, when the cover is closed and the end of the garment goes around the upper edge of that partition and is bunched in this partition. The longer the garment the more bunching and mussing there will be within that well.

(Testimony of Irving C. Roemer.)

Q. Does this patent provide any means for obtaining a secondary fold in the garment in addition to the primary fold?

A. None, whatever.

Q. Does the Winship patent disclose a frame or garment-supporting member hingedly connected to the hinged side of the cover?

A. No. The garment-supporting member is at the free side of the cover, at the uppermost end of the cover when the suitcase is opened.

Q. Does it disclose anything in the way of a garment-supporting means or hanger bar removably carried by the hinged side of the supporting member? A. No.

Q. Does it disclose any means in the nature of a garment-supporting member hinged, or connected to the hinged side of a cover and adapted to be hinged to a horizontal position over the body portion of the luggage when being packed?

A. No. [424]

Q. Does it disclose a primary and secondary folding means of supporting garments on the supporting member in parallel relationship to the normal carrying position of the luggage?

A. No.

Q. Please now refer to the Laprade patent offered in evidence by the defendants, being United States Patent 1,742,656, and discuss the patent in its relationship to the Shoemaker patent in suit and the accused structures of the defendants herein?

(Testimony of Irving C. Roemer.)

A. The Laprade patent is directed to a traveling bag. The bag has two hinged pieces and at the hinged point there is a separating panel which when the bag is opened, when the frame is opened it may be raised to a vertical position, and at the upper end of this panel there are means for supporting garment hangers so that a garment may be placed on that hanger and secured to the panel. The structure shows the lower end of the garment draped down into the body of the bag where it must be folded when the bag is closed and means for placing a secondary fold in the garment, and means for draping it. It is held more or less in the same position when the bag is closed.

Q. The garment hanger is at the end of the panel?

A. It is at the outer end of the panel.

Q. Remote to the hinged end of the panel?

A. Yes, that is correct.

Q. Does this patent disclose anything in the nature of a garment-supporting means for effecting the primary fold in a garment and the folding edge on the free side of the supporting member on which garments are secondarily folded?

A. No.

Q. Now, referring again to the Storch patents, either the United States Patent or the Austrian Patent, or both, do these patents disclose garment-supporting means removably carried by the hinged side of the supporting member as required by a

(Testimony of Irving C. Roemer.)

number of relied-upon claims in the Shoemaker patent? A. No, they do not.

Q. Do the Storch patents disclose a garment-supporting member [425] connected to the hinged side of the cover of the case which is adapted to be hinged to a horizontal position over the body position when being packed? A. No.

Q. What is the disposition of that frame in the Storch patents when it is being packed?

A. To just the frame, do you refer?

Q. I mean the supporting frame designated by the reference character A.

A. The framework A is in a vertical position when the trunk is opened, with its cover and its body portion both in a horizontal position.

Q. Will you now refer, please, again to the Wheary patent offered in evidence by defendants, being United States patent 1,799,877, and discuss this patent in connection with the Shoemaker patent in suit and the defendants' accused structures?

A. The Wheary patent, which is directed to a hand luggage, shows a framework which has a pivotal support with the body portion of the luggage. The frame is secured to removable members. There are sockets provided. The sockets are shown at 32, for example, in Fig. 1 of the drawing, and the frame, the pivotal members of the frame slide into these sockets so the frame may be swung relatively to the body portion. Garments are draped over a horizontal bar at the outer end of the frame,

(Testimony of Irving C. Roemer.)

and the garment, if too long to be held in the cover, the end extends down into the body portion. When the frame is in its vertical position the bar over which the garments are draped is up adjacent the free end of the cover and the free end of the garment hangs down into a specially provided well in the rear portion of the body portion of the luggage.

Q. Is the frame in Wheary connected to the body section of the piece of luggage or to the cover section?

A. It is connected to the body section of that luggage.

Q. Does the Wheary patent disclose a garment-supporting member [426] hingedly connected to the hinged side of a cover? A. It does not.

Q. Does it disclose a garment-supporting means removably carried by the hinged side of the supporting member? A. No.

Q. Does it provide any means whatsoever for effecting a secondary fold in a garment?

A. No.

Q. Will you now please refer to the Pownall patent offered in evidence by the defendants, and being United States Patent No. 1,810,786, and please discuss this patent in its possible relationship to the Shoemaker patent in suit, and the defendants' accused structures.

A. The Pownall patent is directed to a luggage carrier, or a suitcase, the cover of which contains a sort of folding case or flat hingedly connecting

(Testimony of Irving C. Roemer.)

members which may be opened out from the cover and which support bars upon which garments may be draped. After the garments are draped on these bars they are tied to this hinged panel by straps which are brought down over the garments and then the whole form is placed back in the cover as though the garments were being wrapped in a piece of paper, or something of that sort. The garments are then folded without the use of a secondary folding means by having them folded between two flat panels and placed into the case and held in there by sockets, or something of that sort. Much the same effect is obtained as though the garments were laid on top of a panel and folded in half and then placed in the cover or tied into position.

Q. With reference to the panel, where is the bar mounted on which the garments are initially draped?

A. At the outermost end of the panel.

Q. At the free end of the panel?

A. At its free end, yes.

Q. Does this patent disclose a garment-supporting means removably carried by the hinged side of a supporting member?

A. No, it doesn't.

Q. Will you please refer to the Hopkins patent offered in evidence by [427] the defendants, it being United States Patent No. 1,861,274, and discuss this patent in connection with the Shoemaker patent and the defendants' accused structures?

(Testimony of Irving C. Roemer.)

A. The Hopkins patent is directed to a packing holder for coats and other garments. The structure of the patent is very simple. It shows two parallel bars spaced by end bars. It is just a rectangular frame around which garments may be wrapped preparatory to placing them into any type of luggage. The coat or trousers of a man's suit, or any type of garment, may be placed on these two bars and then the bars turned around, or in the manner of a reel, or the garments wrapped round and round and held in position, and prevents them from being mussed when it is placed within the luggage.

Q. Does this patent disclose a piece of luggage comprising a body portion and a cover portion hinged to the body portion?

A. No, it doesn't disclose any hinge.

Q. Does it disclose a garment-supporting member hingedly connected to the hinged side of a cover of a piece of luggage?

A. No, it doesn't.

Q. Does it disclose a garment-supporting member removably carried by the hinged side of—garment-supporting member or—

A. No.

Q. Now, will you please refer to the Levine patent offered in evidence by the defendants, this being U. S. Patent 2,091,931, dated August 31, 1937. Will you please state when the application for the Levine patent was filed?

A. It was filed April 16, 1936.

(Testimony of Irving C. Roemer.)

Q. How does the filing date of the Levine patent correspond with the filing date and the issue date of the Shoemaker patent here in suit?

A. Let me correct myself. The original application was filed April 16, 1936. The application for this patent, which is a divisional application of the original, was filed March 29, 1937. [428]

Friday, March 15, 1940

IRVING C. ROEMER,
Recalled in Rebuttal.

Direct Examination
(Resumed)

Mr. Morsell: Q. Mr. Roemer, yesterday we started a discussion of the Levine patent No. 2,091,931. Will you please refer to this patent? Will you please state the structure covered by that patent, the invention purportedly covered thereby?

A. This patent relates to a garment-supporting device and it relates particularly to the means on which the garment hangers are supported; that is, the so-called extensible trolleys or little plungers which hold the garment-supporting bars in place on a fixture that fits within the suitcase. [431]

Mr. Morsell: Please indicate briefly what the claims of the Levine patent in question cover.

A. Could I refer to a model in doing that?

(Testimony of Irving C. Roemer.)

Q. Yes.

A. Every claim of the Levine patent is limited to the structure which supports the garment bars on a fixture in a suitcase. That structure is a little tube with a plunger in it and snaps at [432] the end of the plunger and a hook on the ends of the garment bars. The Levine patent is directed solely to that portion of a fixture.

Q. Will you please refer to the Cahn patent in evidence by the defendants herein, this being United States Patent No. 1,572,203, and please mention the structural features that patent discloses?

A. The Cahn patent is directed to a dress and suit folder. Reading from page 1, beginning line 13, the patentee says:

“This invention relates to improvements in garment-wrapping or folding devices used in connection with the wrapping of both men’s and women’s garments for delivery to the customer from the store in which they are sold, or from a cleaning establishment.”

It is a device for holding a pasteboard panel in such a manner that that panel might be rotated; a garment is fastened to the panel, the panel is then rotated so the garment is wound about it, and then the panel and the garment are placed in a pasteboard suit box, or the like, for transportation.

Q. Does the Cahn patent disclose a box-like container comprising a body section and a hinged cover section? A. No.

(Testimony of Irving C. Roemer.)

Q. Does the Cahn patent disclose a garment-supporting member hingedly connected to the hinged side of a cover? A. No, it doesn't.

Q. Does it disclose a garment-supporting means removably carried by the hinged side of a supporting member? A. No.

Q. Does it disclose in any manner or means a supporting member in the packed position in the cover of a case with the garments supported in parallel relationship to the normal carrying position of the luggage? A. No, it doesn't.

Q. Does it disclose a garment-supporting member connected to a hinged side of a cover and adapted to be hinged to the horizontal position over the body portion of the luggage after being packed?

A. No.

Q. Will you now please refer to the Cuthbert patent offered in [433] evidence by the defendants, herein, United States Patent No. 1,184,931, and discuss what this patent discloses?

A. The Cuthbert patent is directed to a box for garments and discloses a box within which a garment may be placed, and in the event the garment is longer than the box there is provided a pivotal U bar or rack that swings upwardly from the bottom of the box so that the lower portion of the garment may be draped over that bar, and through the medium of that bar so arranged in the box that the garment may be displayed regularly. The box is not shown with a cover member on it, but a cover

(Testimony of Irving C. Roemer.)

may be placed on the box. There is no provision for handling the box conveniently, or for draping the garment in the box. No particular means are provided for securing the garment in the box, but the patent says that it may be secured in the box.

Q. Does the Cuthbert patent disclose a garment-supporting member hingedly connected to the hinged side of the cover or housing? A. No.

Q. Does the Cuthbert patent disclose a garment-supporting means removably carried on the hinged side of a garment-supporting member?

A. No, it doesn't.

Q. Does it disclose a garment-supporting means for effecting the primary fold of a garment and a folding edge or free side of the supporting member on which garments are secondarily folded?

A. No, it doesn't.

Q. Does it disclose any means for receiving the supporting member in packed condition in the cover with garments supported in parallel relationship to the normal carrying position of the luggage?

A. No.

Q. Does it disclose a primary and secondary folding means for supporting garments on the supporting member in parallel relationship to the normal carrying position of the luggage?

A. No.

Q. Please now refer to the Hamlin patent offered in evidence by the [434] defendants as showing the state of the art, this being United States Patent No. 1,869,418, and discuss this patent.

(Testimony of Irving C. Roemer.)

A. The Hamlin patent, which is directed to a luggage carrier, discloses frames around which garments may be draped. It is a frame which is an entirely separate part of the luggage in which it is to be carried. The garments are placed on the frame and wrapped around the frame, or one edge of it; then the entire frame is picked up and placed into the cover of the case. There are no means, and it would be impractical, if not impossible, to place a garment on this frame while the frame was in the luggage. The frame must be taken out of the luggage, apart from the luggage, to have a garment placed on it, then returned and secured into the cover of the luggage, as taught by the patent.

Q. When the frame is placed in the luggage to what portion of the luggage is it connected?

A. On one shoulder of the frame there are small lugs which ride on slides that are in the upper portion or free end of the cover member. That is the only connection between the frame and the cover member.

Q. Does that frame have any hinged connection with the inner end of the cover? A. No.

Q. Does the Hamlin patent disclose garment-supporting means removably carried by the hinged side of the supporting member? A. No.

Q. Please now refer to the Burchess patent offered in evidence by the defendants, this being United States Patent 1,081,014, and discuss this

(Testimony of Irving C. Roemer.)

patent in connection with the Shoemaker patent in suit, and the accused structures of the defendants.

A. The Burchess patent is for a suitcase. The suitcase has a body portion and a hinged cover portion, and within the hinged cover portion is what might be termed a large removable leather envelope. The envelope is made so as to carry small articles, and it is made [435] removable from the cover portion so that valuable papers might be stored behind it. The object of the patent is to provide a secret compartment for carrying valuables in a suitcase, the cover of a suitcase.

Q. Does the Burchess patent disclose a garment-supporting member hingedly connected to the hinged side of the cover?

A. No, it doesn't.

Q. Does it disclose a garment-supporting means or bar removably carried by the hinged side of the supporting member? A. No.

Q. Does it disclose an arrangement including a garment-supporting bar for the primary folding of the garment and a folding edge on the free side of a supporting member for effecting the secondary fold of a garment? A. It doesn't.

Q. Is the secret compartment of Burchess adapted to be hinged to a horizontal position over the body of the piece of luggage when being packed?

A. No, it isn't.

Q. Please now refer to the O'Donnell patent of-

(Testimony of Irving C. Roemer.)

ferred in evidence by the defendants, this being United States Patent No. 1,094,087, and discuss this patent.

A. The O'Donnell patent is for a garment hanger and box therefor. The patent discloses another form of suit box such as might be used by a laundry or clothes cleaning establishment or tailor for packing various types of garments. The structure consist of a pasteboard panel which serves as a hanger over which a garment may be draped and around which part of the garment may be wrapped; and it has a handle portion or means upon which it may be wrapped. Then there is a box constructed in the manner of an ordinary pasteboard suit box and having slits in the sides of its body member and of its cover member so when the garment is placed in the box the handle of the hanger extends through the slits and the entire assembly may be carried by that handle. [436]

Q. Does the O'Donnell patent disclose a cover hingedly connected to portions of the luggage cover?

A. No; no, it doesn't.

Q. Does it disclose a garment-supporting means removably carried by the hinged side of a garment-supporting member? A. No.

Q. Does it disclose a garment-supporting member connected to the hinged side of a cover and adapted to hinged to a horizontal position over the body of the luggage when being packed?

A. No.

(Testimony of Irving C. Roemer.)

Q. Please now refer to the Boyd & Keller patent offered in evidence by the Defendants, this being United States Patent No. 1,185,971, and discuss this patent.

A. The Boyd & Keller patent relates to a wardrobe trunk composed of hinged parts; one-half of the trunk carries extensible trolleys for the support of clothes hangers. It is the conventional wardrobe trunk which stands in a vertical position and in which the clothes hang vertically with no means for folding or draping. They hang on ordinary clothes hangers which are supported within the trunk on the trolleys.

Q. Does the Boyd & Keller patent disclose a garment-supporting member hingedly connected to the hinged side of the cover? A. No.

Q. Does it disclose a garment-supporting means removably carried by the hinged side of a garment-supporting member? A. No.

Q. Does it disclose a garment hanger or bar for the primary fold of a garment and a folding edge on the free side of the supporting member on which garments are secondarily folded? A. No.

Q. Does it disclose a garment-supporting member connected to the hinged side of the cover and adapted to be hinged to a horizontal position over the body portion when being packed?

A. No.

Q. Does it disclose primary and secondary folding means for garments on the supporting member

(Testimony of Irving C. Roemer.)

in parallel relationship to the normal carrying position of the luggage? A. No.

Q. Will you now briefly refer to Steuwer Patent offered in evidence [437] by the defendants, this being United States patent No. 1,641,705, and discuss the disclosures in this patent?

A. The Steuwer Patent relates to a garment holder. It doesn't disclose a piece of luggage or a box of any sort, but discloses a rectangular adjustable frame over which a garment is placed before it is packed in luggage of any type. The frame is adjustable in two positions so that it may be made of any desired size to fit any particular garment, and it is intended to hold the garment in an unincreased condition when it is packed in the luggage with other garments.

Q. Does this patent disclose a piece of luggage including a body section and a hinged cover section?

A. No, it doesn't disclose any luggage.

Q. Does it disclose a garment-supporting member hingedly connected to the hinged side of the cover of a piece of luggage? A. No.

Q. Does it disclose garment-supporting means removably carried by the hinged side of a garment-supporting member? A. No.

Q. Will you now please refer to the Levine patent No. 1,799,521, offered in evidence by the defendants herein, and discuss the showing in this patent?

A. The Levine patent relates to a pivotal—

(Testimony of Irving C. Roemer.)

Mr. White: May I interrupt? Is this the same Levine patent that he testified to before?

Mr. Morsell: No. This is the other Levine patent.

Mr. White: It was pleaded but I don't think it was introduced in evidence.

Mr. Trabucco: No, it was not.

Mr. White: That patent is not introduced in this suit; we did not rely on that.

Mr. Morsell: That patent is not relied on? Very well, we [438] will eliminate the discussion of that.

Please refer to the Duverge British patent offered in evidence by the defendants and discuss the showing in that patent.

A. The Duverge British patent No. 174,647, relates to a garment-supporting device to be used in wardrobe trunks. It has a frame or H-shaped cross section with a garment hanger attached to it and hooks or means by which it may be placed on the so-called trolleys of a wardrobe trunk. The garments are put on the hangers and wrapped around this frame, which is a member entirely removable from the trunk or luggage in which it is packed.

Q. Does it disclose a garment-supporting member hingedly connected to the hinged side of the cover of a piece of luggage?

A. No, it doesn't.

Q. Does it disclose garment-supporting means in the nature of a bar or hanger removably carried

(Testimony of Irving C. Roemer.)

by the hinged side of a garment-supporting member?
A. No, it does not.

Q. Does it disclose a garment-supporting member connected to the hinged side of the cover portion of a piece of luggage and adapted to be hinged to a horizontal position over the body portion when being packed?
A. No.

Q. Now, kindly refer to the Schwartzenger British patent offered in evidence by the defendant and discuss the showing in this patent.

A. The Schwartzenger British patent relates to luggage and it discloses again a frame of H-shape which may be removed from the luggage and about which a garment may be wrapped, and the frame has two parallel bars, and it is intended that a garment be wrapped around these bars for packing, and after the garment is wrapped the bars or whole frame is placed into the cover of the luggage.

Q. Does this patent disclose a garment-supporting member hingedly connected to the hinged side of a case, or the cover of a case? [439]

A. No, it doesn't. The only connection between the cover and the garment-supporting member in the Schwartzenger patent is that the free end, or free side of the cover.

Q. Does it disclose a garment-supporting means removably carried by the hinged side of the supporting member?
A. No, it doesn't.

Q. Does it disclose a garment-supporting member connected to the hinged side of the cover por-

(Testimony of Irving C. Roemer.)

tion of a piece of luggage and adapted to be hinged to the horizontal position through the body portion when being packed? A. No.

Q. Will you please refer to Defendants' Exhibit L, luggage case allegedly embodying the early development of Mr. Maurice Koch? I would like to have you take that and explain why the lower part of the fixture jumps out of its socket mountings, so we may have an explanation of the reason for that?

The Court: Why not try the one that doesn't jump out? The testimony explains that. He said he didn't make it up; somebody else made it up, and made a mistake.

Mr. Morsell: Well, there is just one point I want to develop, your Honor.

The Court: I will say this, so you can follow my state of mind, if either of these have any value or relation to the merits of this case it is the one that is corrected.

Mr. Morsell: Q. In Defendants' Exhibit S, the corrected Koch structure, what takes place when the frame is moved from a horizontal position to a vertical position within the cover of the case with respect to the distance between the bar at the outer end of the frame and the bar at the inner end of the frame?

A. Referring to the bar at the inner end of the frame as the garment hanger, and the bar at the outer end as the folding edge, when the frame is in its horizontal position there is a measurable [440]

(Testimony of Irving C. Roemer.)

distance between the garment hanger and the folding edge. When the frame is swung to its pivotal position, that distance increases very materially so that as a garment is being packed, as it has been packed in demonstration of this model, one of two things must happen, the garment must be dragged over the folding edge or the garment must be stretched more than an inch within about a foot of its length.

The Court: Get a garment and illustrate it. Wasn't there a demonstration here that disclosed that, if my memory serves me? Am I correct in that?

Mr. Morsell: Yes, it has been demonstrated. I just would like to have this witness explain what happens.

The Witness: May I demonstrate from there to show the amount, the actual measurement?

The Court: Well, why do you differentiate between those two?

The Witness: There is no difference.

The Court: Well, then, why is it you are trying to put on a demonstration on this particular one? That is the one that the socket jumped out of.

The Witness: Yes. That is caused by the fact that the inner bar can jump out, which shows the measurable——

The Court: The reason I suggest that is this: on this the bar went in there in the manner the witness testified. **It is probably one of those things** that happens. He wasn't there when the first one

(Testimony of Irving C. Roemer.)

was installed, that is his testimony, if I follow it. Is that correct?

The Witness: That is correct, your Honor, but the bar is still in exactly the same position.

The Court: I know, but this bar doesn't jump out like the other one did. [441]

Mr. Morsell: There is the same relative position between the two, and we simply want to show the amount of elongation which takes place.

Mr. White: That was measured, your Honor. As I recall it it was 11 or 12 inches, or about one and a half inches different.

The Court: There was a difference of an inch and a half or two inches.

Mr. Morsell: I am content to let the matter rest there. I would simply ask the witness whether in his opinion that elongation which takes place during the packing of the garment is objectionable.

A. I should say it were definitely objectionable.

The Court: All right. Demonstrate that.

The Witness: I will demonstrate first on Exhibit L. I do this simply to show the distance that the garment must be stretched if the bar had been held in its position. We find the bar is raised out of its socket a distance more than an inch, so that if this garment——

The Court: An inch or an inch and a half?

A. Yes. If this garment, if the bar had remained in place it would have placed a considerable strain on the garment, or caused the garment to be draped over the outer bar.

(Testimony of Irving C. Roemer.)

The Court: All right, now try the other one.

Mr. Trabucco: In making this demonstration, your Honor, I would suggest the witness grasp the garment-supporting member and not the dress which is on the bar.

The Court: Your position is it will slide?

Mr. Trabucco: Yes, it will slide over the rod if you do it that way.

The Witness: That is exactly what I am saying, that if it is dragged over the rod, your Honor—

[442]

The Court: In the event it is, what would happen?

A. You are placing a strain on the garment.

Mr. Morsell: In the event of a sheer garment, such as these garments are customarily composed of, silk garments, what would be the result?

The Court: All right. Now, let's have the demonstration.

A. The garment must be dragged over this bar, the outer folding edge; it must be dragged over the same distance that the bar in the last demonstration was pulled out of its socket, about an inch.

The Court: But their answer to that is that it is pressed in shape.

The Witness: That is quite correct, one part of the garment—

The Court: Isn't that the point?

Mr. White: That was the testimony of Mr. Koch.

The Witness: One part of the garment is pressed or stretched and all of the rest of the garment is

(Testimony of Irving C. Roemer.)

in a draped position. It doesn't press this part of the garment; it just imposes a strain on the other part of the garment. This is naturally draping a garment like this on a bar, and in this manner it stretches the garment at one point.

The Court: In that respect, what does the Shoemaker patent say?

A. In the Shoemaker patent the garment hanger—

Mr. Trabucco: I suggest the demonstration be made with reference to the Shoemaker exhibit.

The Court: All right. Let's be practical. We theorize on these things a great deal. Now, make the other one.

A. In the Shoemaker patent the garment hanger over which the garment is primarily draped is so arranged with respect to the folded place over which the secondary fold is made that when it is folded there is no necessity for dragging the garment over the outer end of [443] the frame; just fold it over the other frame.

Mr. White: May I suggest that hanger be pushed in there its full length?

The Witness: The garment on both sides of the frame now is loosely draped.

Mr. White: Let the record show two things, your Honor; one is that the demonstration was made on Plaintiff's Exhibit 6 and the expert testified to it as being a demonstration of the Shoemaker patent, and, secondly, that there was an elongation within

(Testimony of Irving C. Roemer.)

the distance between the stationary pivotal points and as it came out it can be measured, if the expert will measure it.

Mr. Trabucco: I suggest that measurement be taken, your Honor, if there is any doubt of the testimony.

The Court: Take the measurement, if it is.

Mr. Morsell: Referring to the patent drawing of the Shoemaker patent—

Mr. Trabucco: We object to—

The Court: Let's get through with this demonstration before we go any further.

Mr. Trabucco: We object to it unless there is a statement about this elongation, that there is an elongation also in this exhibit,—

The Court: Mr. Expert, give us the benefit of your experience.

The Witness: I don't believe that there is.

The Court: I don't know whether there is or not.

The Witness: I don't believe that there is a lengthening.

The Court: It is subject to cross-examination.

The Witness: As a matter of fact, I don't know, myself, because it might be measured in a very small fraction of an inch.

The Court: Well, all right, give us the small fraction of [444] an inch.

The Witness: May I have something to measure with?

Mr. White: We wish to have the measurement

(Testimony of Irving C. Roemer.)

go from center, as it was made originally on this model.

The Witness: On the defendants' model? I think I should make these measurements the way I wish.

The Court: We will do it just the way I order. While I am here there is one thing I am expected to do, and that is to conduct this hearing. I will do that. Now, you take the center, which we did in the other one.

The Witness: From the center of the garment bar, I mean of the hanger bar, to the center of the garment-supporting bar in the horizontal position is $13\frac{1}{8}$ inches, the same measurement with the part swing to a vertical position, center to center, is $13\text{-}3/16$ inches. Am I right?

Mr. White: Yes. Now, your Honor——

The Court: Wait; what was that distance?

A. A difference of $1/16$ of an inch.

The Court: All right.

Mr. White: Let the record show the measurement was made on a multiple holder from the top roller, not from the bottom roller of the hanger bar.

The Court: Well, that is only another inch.

Mr. White: Another inch difference.

The Court: It wouldn't make very much difference, I imagine; would it?

The Witness: It wouldn't make any difference, your Honor, because if a garment is hung on the bottom——

(Testimony of Irving C. Roemer.)

The Court: All right. If it does—you don't show us the difference. Measure it from the bottom and see where we are. [445]

Mr. White: Measure it from the bottom.

The Court: Then we will be satisfied.

Mr. Trabucco: Take out the upper hanger rod.

The Court: Get the difference in that length from top to bottom.

A. The measurement from the bottom bar must be taken to follow the garment—first up this way, over the other bar, and then out this way. That is the way it must be done.

The Court: Everybody is watching everybody else. If you take it from the bottom what would it be?

A. I think there would be considerable difference.

The Court: Let's find out what it would be.

Mr. White: We wish the record to show it is a multiple fixture instead of a single bar.

The Court: Certainly.

Mr. White: In the defendants' structure there is only a single bar so the demonstration should be identical with the single bar in each case.

Mr. Trabucco: I suggest the demonstration be made with the bar in its natural position and not in its swung-back position.

The Court: Put it in the natural position.

The Witness: If your Honor please, I don't know exactly where to measure it——

(Testimony of Irving C. Roemer.)

The Court: Do the best you can.

The Witness: But the perpendicular—I will take the measurement in a horizontal position from the center of the bottom hanger bar to the center of the folding edge of the frame and I find it to be 13 inches.

The Court: All right.

Mr. Morsell: Remove the frame to its vertical position in the case. [446]

The Court: Now, leave it identical as it was before when you measured across.

A. I measure now and find the distance to be 14-1/4 inches, a difference of an inch and a quarter, and I would like to say—

The Court: Well, wait just a minute.

The Witness: I would like to say if there were a garment on this rack in this position that the bottom bar is sliding perfectly free and makes up that inch and a quarter and makes the measurement come exactly the same.

Mr. Trabucco: Suppose there were garments on the other hanger rods, would that same effect take place?

A. No. There would be still a difference, and my first measurement would have been entirely wrong, because the garments would then come up about this far and I would have had a little in excess of fourteen measurement to begin with, and there would still be a fourteen-inch measurement on the final measurement.

Mr. Morsell: In the Shoemaker patent in suit as exemplified by the patent drawings on the chart,

(Testimony of Irving C. Roemer.)

Plaintiff's Exhibit 9, where is the removable bar carried with reference to the frame?

A. The removable bar is carried between brackets which are secured to the frame.

Q. In moving the frame from a horizontal position to a vertical position, will there by any appreciable elongation between the two bars?

A. There will be absolutely no difference between them in swinging the frame from its horizontal to vertical position, because they are both affixed to the same member.

Q. There will not be any elongation of a garment or rubbing of a garment as the frame is moved?

A. None, whatsoever.

Q. What is the condition in this regard with respect to the two structures of the defendants which we are concerned with herein? [447] I now refer you to Plaintiff's Exhibit 7, a case that is manufactured by the defendants Koch.

A. In this case there is no difference in the measurement between the hanger rod and the folding edge as the fixture is swung from its horizontal to its vertical position.

Q. What is true in this regard with respect to Plaintiff's Exhibit 8, the complained of structure of the Silvermans in this litigation?

A. The same is true here. The hanger bars and folding edge do not move relative to each other in

(Testimony of Irving C. Roemer.)

folding that frame. The distance between them is always the same.

Mr. Morsell: That is all on direct examination.

Cross Examination

Mr. White: Q. Mr. Roemer, I will call your attention to Fig. 9 of the Shoemaker patent which is not shown on the enlargement there. Will you examine it? It is not shown on Plaintiff's Exhibit 9. I will ask you whether it is not true in that instance that the hanger rod is secured to the cover and not to the frame of the garment-supporting member? A. That is true.

Q. Doesn't Shoemaker show in his patent a structure in which elongation would take place similarly to that here demonstrated in connection with Defendants' Exhibit S?

A. That was not my testimony.

Q. I asked you is it true or is it not true that Shoemaker in his patent shows a modification of, or a form in which the same elongation would take place as you testified to in connection with the defendants Exhibit S?

A. Are you referring then to Fig. 9?

Q. I am asking you a question.

A. The answer to the question is no.

Q. Which means your contention is the Shoemaker patent doesn't show any such form, is that correct?

A. That is correct. I would like to say—

(Testimony of Irving C. Roemer.)

Q. What is correct, my contention or yours; does it or does it not show?

A. It doesn't show a structure where the garments are stretched in being placed in the cover of the case. I want to say that in Fig. 9 it is impossible to tell the exact relationship between the hinges on the member 12 and the supporting connection of the bar 30, but the way I look at Fig. 9 I think it would be impossible to do any stretching in that figure, and I think it would be necessary of the structure shown in Fig. 9, it would necessarily be the reverse, and when the garments are placed on there the garments would be more loosely draped in folding there; there would be no stretching.

Q. May I call attention to the two little hinges with four dots on each side on Fig. 9 of the Shoemaker patent over the word "No. 16", which is at the hinged side of the frame, isn't it? There are two hinges near each end which have a sort of fancy outline and four dots here. Isn't it true that when the hinges—that those are hinges on each side of 16 on the supporting frame? A. Yes.

Q. Could you therefore determine the relationship between the hinged end of the supporting frame and the bar 30 when bar 30 is separately supported in the cover?

A. Yes, to a certain extent you can, but this is a view taken on a cross section through the cover in its open position, as though you were looking down; consequently the bar must be positioned higher, or at least as high as the hinges on member

(Testimony of Irving C. Roemer.)

16 which are fastened to the lower members shown in this view.

Q. Isn't it true the Shoemaker patent doesn't show any form in which there are multiple hanger bars supporting the garment frame or in the cover?

A. There are no drawings in the Shoemaker patent which disclose that.

Q. I would ask you whether there is any showing in the Shoemaker patent [449] which would suggest that the hanger bar or rod is slidable upwardly under stress or pulled in the manner you demonstrated in the operation of Plaintiff's Exhibit 6?

A. No, there is nothing like that in the patent.

Q. Therefore that sliding arm C you referred to in connection with the operation of Plaintiff's Exhibit 6, so far as the rods are concerned, is not part of the teaching of the Shoemaker patent; is that correct?

A. That is correct.

Q. If you had such sliding take place then there would be a turning up into the cover, the entire frame, just the same way as it is in Defendants' Exhibit S; isn't that correct?

A. Certainly not. Are you speaking about the disclosure of the patent or this particular—

Q. We speak of the models which have no sliding arms. The same strain would occur, wouldn't it?

A. If there were no sliding arms I don't know what the bars would look like. They couldn't be

(Testimony of Irving C. Roemer.)

in that position. It would be an entirely different thing.

Q. It has only one bar?

A. It has only one bar.

Q. The bottom bar?

A. I don't know whether—I don't know where the bottom would be positioned.

Q. The same position as it is *not*.

A. It couldn't be a removably detached bar and have no sliding arm in a structure of that sort.

Q. Couldn't it have the same structure as Fig. 9 of the Shoemaker patent with a pin in the end and a little socket?

A. Yes, that box may be made like Fig. 9 of the Shoemaker patent.

Q. I don't say the box. I say the lower part of Plaintiff's Exhibit 6 to be supported in the same manner as the bar is supported in Fig. 9 of the Shoemaker patent, and whether that wouldn't be a removable bar in a fixed position?

A. To be a removable bar in a fixed position. Now, to answer your question, if the bar 30 of Fig. 9 of the Shoemaker patent were placed in Exhibit 6 and the [450] supporting frame 12 were placed in Exhibit 6 there would be no stretching of the garment when it was swung to its position within the cover.

Q. In the same relative position as they are placed in Plaintiff's Exhibit 6?

A. Yes, as shown on Fig. 9 of the patent. I don't mean to be avoiding your question, Mr.

(Testimony of Irving C. Roemer.)

White. I would be very glad to explain it in detail if you wish to have me do so.

Q. Well, so far as the explanation goes, as I understand your contention it is that you are looking at the figure 9—

A. Yes. I think you misunderstand Fig. 9.

Q. Were the frame turned around over the box and the hanger bar is behind it in the cover—is that correct—and your contention is that so far as both frames go the bar may be above or below or any other place relative to the side?

A. No, that isn't. May I make myself clear?

The Court: Surely.

A. Fig. 9—Mr. White, would you care to look, because I think—

Mr. White: Yes.

The Witness: It is my belief you misunderstand Fig. 9. Fig. 9 is a view of a suitcase as though it were cut off here and you are looking down here.

Mr. White: It is a plan view?

A. A plan view of a suitcase opened and a section through the cover of the case in its folded position. Fig. 9 shows hinges, the little irregular marks you referred to on the hinged side of the cover right close to the hinge of the cover member, the lowermost side of the cover, in this direction. That is the hinged point of the folding frame in Fig. 9. In Fig. 9 is shown a removable bar 30. That removable bar 30 can not be lower than those

(Testimony of Irving C. Roemer.)

hinges because of the fact that the hinges are the lowermost part of the cover. It would be impos-
[451] sible to have that removable bar 30 lower than the hinges, and it would be necessary to have it a little higher than the hinges. To make room to place a garment on it it would have to be higher. Consequently, being higher than the hinge when you bring this up you have shortened the distance between the folding edge and the removable rod; you would not lengthen the distance.

Mr. White: That is correct. Take the same structure as my question pointed to, if the same structure as shown in Fig. 9 of the same plan was incorporated in connection with the frame shown in Plaintiff's Exhibit 6 then the position you just described would be reversed.

A. No. That would depend entirely upon the position in which you put the removable bar.

Q. My question was directed to the lowermost bar in the multiple fixture as shown in Fig. 6, because that is what you demonstrated in comparing the defendants' structures.

A. You have asked me about Fig. 9. If you place a single bar below the pivotal connection in this model there would be a stretching. If you placed the pivotal bar, as it is in Fig. 9, as it undoubtedly is, it must be above the pivotal connection. There wouldn't be any stretch, there would be a relaxing of the tension on the member as it was pivoted up.

(Testimony of Irving C. Roemer.)

Q. Which means, in your judgment, the garments would correspond under those conditions?

A. The garments would hang, would drape on the upper bar.

Q. There wouldn't be a slide in the opposite direction?

A. There would be no drag over the bar, no. The garments would then freely drape on the upper bar.

The Court: We will take a recess for a few minutes.

(After recess.)

Mr. White: Q. Is it your opinion, then, Mr. Roemer, that the [452] claims of the Shoemaker patent are limited to hanger frames of such type where there is no elongation of turning the frame between the hanger rod and the free end or pivotal strip of the hanger frame?

A. I won't say that the claims are limited that way, but the claims are directed to a structure in which there would be no elongation of the garment.

Q. Therefore, they would exclude structures in which there is such an elongation?

A. Not necessarily.

Q. The question is whether you are in position to commit yourself whether they are inclusive or exclusive. We are trying to determine the scope of the claims of the Shoemaker patent, of course, at this time.

(Testimony of Irving C. Roemer.)

A. Well, I think it is a very difficult thing to do in just that manner, because when a claim is a broad claim it might include many other things. For me to say every possible structure that Shoemaker claims might include would be impossible. I say that the Shoemaker claims are directed to a structure in which there would be no stretching of the garment.

Q. Do you remember your testimony yesterday in connection with the Austrian and the United States Storch patents? You remember the structures?

A. I do, yes.

Q. Of course, you are also familiar with the case structure of the defendants. You testified to that. Could you express an opinion as to the fact whether structurally Koch's structures, or defendants', are closer to the structure of the Storch patents than they are to the structure shown, for instance, on Fig. 1 of the Shoemaker patent?

A. Not an off-hand opinion. I would like to refer to the drawings and give it a little thought before I express an opinion for you on that subject.

Q. Well, the drawing is before you. You might refer to it.

A. May I hear the question? [453]

(Question read.)

A. I believe that both of the Koch structures are closer to Fig. 1 of the Shoemaker patent than they are to the Storch patent structurally.

Q. I will ask you whether it is not true that both of the Koch structures and the Storch patents

(Testimony of Irving C. Roemer.)

have what you call a frame member and an auxiliary frame member which are pivotally connected to each other—I am using approximately your own terminology.

A. You are using my terminology as I have described Defendants' structure, but not terminology that I recall using in connection with the Storch patent.

Q. Therefore the difference between the two structures is a question of terminology. Do you mean to say that?

A. No, I don't mean to say that.

Q. You have the Storch patents before you?

A. Yes.

Q. I call your attention—if your Honor please, I would like to have the question referring to the auxiliary frame terminology answered. I would like you to answer the question.

(Question read.)

A. They might very well be said to have because there are so many parts in the Storch patent that can be called an auxiliary frame member. It has several parts that can be called frame members and several parts that can be called auxiliary frame members, but no parts that are frames and auxiliary frames in the same sense that they are in the defendants' structures.

Q. Isn't it true in the Storch patent you have two distinct groups of elements, one which is pivoted to the luggage, itself, and another group of

(Testimony of Irving C. Roemer.)

elements, including the support or frame for the hanger bar which, as a unit, is pivoted on the first group of elements and through it is indirectly connected to the luggage?

A. Yes, the [454] lazy tong member is pivoted to the support or frame which is, in turn, pivotally connected to the luggage; that's right.

Q. Isn't it true in the defendant Koch's structures there are, first, two parallel bars which are directly connected to the luggage and then there is a frame for the hanger bar which is pivoted on the ends of those first-mentioned members?

A. Yes, that is true.

Q. Are there any corresponding elements present in the Shoemaker structure as shown in Fig. 1 of the Shoemaker patent on Plaintiff's Exhibit 9?

A. You say are there any corresponding, or some corresponding members?

Q. To the members that you——

A. I will answer this way: There are no parts on the disclosure of Shoemaker's Fig. 1 that would be compared to the lazy tongs member of Storch or an auxiliary frame of the defendants' device.

Q. Therefore, in respect of the swinging of the hanger rod on a separate frame, pivotal or separately on another part of the frame which in turn is connected to the luggage in Defendants Kochs' structure it is closer to the showing of the Storch patent than it is to the structure shown on Fig. 1 of the Shoemaker patent; is that true?

(Testimony of Irving C. Roemer.)

A. Only through the use of that terminology. When you call the things by the same names it would be bad to say that one is closer than the other, but, as a matter of fact, there are three different structures. Fig. 1 of the Shoemaker patent and the defendants' device operate on the same principle. The defendants' device has an auxiliary member added to it for a different purpose. Now, we don't find such an auxiliary member for such a purpose described in that combination in the Storch patent. We find auxiliary frames, if you wish to use that terminology, but in terms that is the only way that a comparison might be made. If you look at the physical [455] structures they are as different as night and day.

Q. You mentioned something about this auxiliary member, as you call it, in the Kochs structure, for a particular purpose. For what purpose are they? Isn't it true they are for the purpose of holding the hanger rods on which are hung the garment, and then to swing with the hung garment into the luggage, either the cover or into the body, in the Kochs structure in the cover, and in the Storch either in the cover or in the body; in both cases you have the same purpose; isn't that true?

A. In the way you express it it is the same purpose. They are both to store garments—

Q. Both of them are for the purpose of supporting the garments and then on a revolving motion hold to the other part of the frame and then

(Testimony of Irving C. Roemer.)

into the luggage, the garments; isn't that correct?

A. No. Your revolving motion is in the wrong direction so it doesn't fold on the other part of the frame as it does in the combination of the Shoemaker patent.

Q. Isn't the function the same whether you revolve it in either direction?

A. No, it is not.

Q. Why?

A. Because the same part of the device doesn't serve as a secondary folding member when you revolve in one direction as it does when you revolve in the other direction.

Q. Why?

A. It is only by revolving in the wrong direction that you can make the Storch patent refer to either the Shoemaker patent or the defendants' structures.

Q. I show you here a sketch which has two elements in there marked the Storch type. It is a diagram of it showing the elements relative to each other. I will ask you to explain why the same element couldn't work as a secondary folding strip or member if the pivotal member is rotated in either direction, either in the direction you call wrong or in the direction you call right.

A. I see what you refer to [456] in this sketch but I certainly see no foundation for calling this—for entitling this sketch "Storch type," because I see nothing in the Storch patent which justifies

(Testimony of Irving C. Roemer.)

this sketch, and, furthermore, if this device is used so that by folding in the wrong direction you can get a secondary fold in the manner you have indicated—may I mark——

Q. Yes.

A. With a mark "A", you don't have anything like the Shoemaker patent teaches.

Q. Therefore, it is your opinion that if the swing of the top fixture is in the opposite direction than it now swings in Defendants' structure but otherwise it folds the same way, then it would not be within the Shoemaker patent; is that correct, if you collapse this, looking at it in a——

A. You have me a little bit confused between that sketch, here, and the Storch patent and that structure, there. If you can make your question a little bit more clear for me——

Q. Is it true, then, that in your opinion the patent of Shoemaker is limited to a rotation in one direction only and if there is a rotation in the other direction, then the Shoemaker claims do not read on it, although the alternate position of the element might be the same?

A. Well, the Shoemaker patent does not call for that type of rotation at all. It is not directed to a type of rotation. It is only where you use an auxiliary arm that you have such rotation. In the Shoemaker patent the frame folds in this position within the cover and a position horizontally over

(Testimony of Irving C. Roemer.)

the luggage, so it is not directed to rotation in one direction or another for an auxiliary arm.

Q. In general, of course, you testified to the art here, and we shall not bother you again or go through each patent. Before going any further, if your Honor please, I would like to introduce this in evidence for the sole purpose of illustrating the present tes- [457] timony.

Mr. Morsell: I object to that, your Honor. I don't see the justification for this sketch.

Mr. White: The expert gave testimony and marked this as "A" and I want to show what he referred to.

The Court: He says he doesn't know where you got that structure you have drawn, the outline of it there. Until you show us that I will sustain the objection to it.

Mr. White: Well, so long as there is no stipulation to it all right.

Q. In general, do you claim that the Shoemaker patent in the line of the prior art includes novelty as to the method? The luggage is old, isn't it?

A. By the method, you mean a body portion and a cover portion?

Q. A body portion, a cover portion, a hinged cover portion. A. Yes, that is old.

Q. Old in the prior art? A. Yes.

Q. Now, then, you also will admit that the prior art patents show various ways of hangers and fixtures which are either within the body or within

(Testimony of Irving C. Roemer.)

the cover portion of the luggage in order to hold garments therein. Could we agree on that?

A. Yes, there are garments fixtures in the prior art.

Q. Of various types?

A. Various types and various kinds of material.

Q. You will also admit there are garment fixtures which hold garments within the cover of a suitcase? A. Yes.

Q. That is old in the art. Now, then, you will also admit that there are structures which show garments folded primarily and secondarily on different folding members which are within the cover of a luggage?

A. Yes, I believe there are, but none holds the fixture [458] in the case in such a manner that the folds are made properly upon closing the fixture into the case and to drape the garment properly when the fixture is so closed.

Q. What do you call "properly"? You mean won't wrinkle, or something?

A. No, I mean the relationship of the garment hanger and the garment folding bar within the luggage.

The Court: What did the Shoemaker patent do that has not been done, or that is not in the prior art?

A. The Shoemaker patent provides for draping a garment over a removable garment bar, then placing that bar in place in a pivoted garment-support-

(Testimony of Irving C. Roemer.)

ing member and then closing that garment-supporting member into the cover of the luggage by means of this pivotal support in a certain part of the cover, with the result that that closing movement puts a second fold in the garment and drapes the garment in a normal carrying position in the luggage.

Mr. White: Q. And the difference of that structure you just described, or that invention, over the prior art folding devices is such as shown in the Hopkins patent, that is, in the other cases you take them entirely out and you secondarily and primarily fold the garments off them, and then place them into the cover and use some means to hold them in there, while in the Shoemaker patent you hinge the same element inside of the cover; is that correct?

A. To which patent did you refer? There are quite a few differences in the structures. Referring first, for instance, to the Hopkins patent, there is no removable garment-supporting means, no removable hanger such as could be placed in position at the pivoted end of the supporting means.

The Court: So that I may follow, aside from this removable hanger what else, if anything, is not in the prior art here?

A. The hinged connection between the garment-supporting member. [459]

The Court: Describe that.

(Testimony of Irving C. Roemer.)

A. The garment-supporting member is this, the larger member that comes out and folds up into the cover. The prior art doesn't show that hinge, no hinged side of the cover member, so that it folds up into this position within the case, and shows it with a removable bar so that when you put the garment over the bar and the bar is placed in its removable connection you automatically get a second fold which at the same time places the garment in its proper carrying position and drapes it over this supporting member within the cover of the luggage.

Mr. White: Q. Isn't it true that the fixture in the Storch patent, at least one of them is connected hingedly to the lower portion of the vertical side of the cover of the luggage? I call your attention to U. S. Storch patent and to the figure in the lower left hand corner.

A. That is correct. Yes, the bar A', which is a stirrup or U-shaped member, is connected to the hinged side of the cover member.

Q. Yes, and that is approximately the same position on the side as the position of the device of the structure in Plaintiff's Exhibit 6; is that correct?

A. It is in the same general position, yes.

Q. Now, that is one of the features of novelty that you have claimed in the Shoemaker patent, the removable hanger bar and the frame?

A. That is one of the novel features; that is one feature of the novel combination of the Shoemaker patent.

(Testimony of Irving C. Roemer.)

Q. I would like to call your attention to Plaintiff's Exhibit 5, and I will ask you if when you use that in connection with a coat, because there is a hanger in it, whether you get a primary and secondary fold?

A. Not with a coat, no. If you put a pair of trousers in there you do get a primary and secondary fold.

Q. Therefore, this particular structure, Plaintiff's Exhibit 5, is really within the scope of the claim only when it is used in con- [460] nection with particular types of garments, like a pair of trousers or other garments which are folded in a particular manner? A. Yes.

Q. Now, I will call your attention to Fig. 1 of the Hamlin patent, and I will ask you whether that arrangement therein is for a coat. [461]

Mr. White: Q. In connection with Fig. 1 of the Hamlin patent, the coat is used in the same manner, folded in the same manner as the same would be folded in the luggage in Plaintiff's Exhibit 5, the folding is identical?

A. Same folding takes place in the garment.

Q. And also in connection with Fig. 2, the folding of the trousers as shown there is exactly the same manner as in Plaintiff's Exhibit 5?

A. The same folds are placed in the garment, yes; not in exactly the same manner. The garment, itself, is folded in this—

Q. Only it is folded outside of the cover and

(Testimony of Irving C. Roemer.)

not at the time you turn the particular garment into the cover; is that correct?

A. Yes, folded by different means.

Q. Isn't it true that the difference between, say, Fig. 5 of the Hamlin patent, as the showing is there, and Fig. 1 of the Shoemaker patent, is that instead of the frame being supported at its upper end at the point marked 22 in Shoemaker it is pivoted and [462] opposite the lower end to the frame?

A. That is one of the differences.

Q. And that would be the only difference between Hamlin and the Shoemaker patent, would it not?

A. I should say not.

Q. What else?

A. The differences are very obvious from the drawings, there; there is no folding member, there is no provision for pivoting this at its opposite end.

Q. We mentioned that before. The point of pivot is No. 1. No. 2 is the shape; is that correct?

A. There is no detachable bar adjacent the pivoted end.

Q. 3 is the detachable hanger.

A. Adjacent the pivotal end. The whole combination is lacking. This is a device that you take out of a suitcase, wind the clothes around it, and place back in the suitcase. When you place it back in you hang it by its opposite end from the pivotal connection in the Shoemaker patent.

Q. The last structure you described is present in the patent of the prior art, you admit?

(Testimony of Irving C. Roemer.)

A. You mean structures something like the Hamlin patent are found in the other structures in the prior art?

Q. Yes.

A. Yes, these removable clothes winding frames can be found.

Q. I will call your attention to Fig 10 in the Shoemaker patent in suit, and I will ask you whether any of those prior art structures that you just mentioned has a primary and secondary folding of garments there which could not be placed exactly in the same position and in the same place as the frame No. 12 is placed in Fig. 10 of the Shoemaker patent to function the same way?

Mr. Morsell: I object to this line of questioning, your Honor. Obviously, the Shoemaker patent discloses a number of things. That patent contains 28 claims. We are not relying on all the claims of the patent, and I think this examination should be confined to [463] the devices in the Shoemaker patent which are readable on the claims on which we are relying.

Mr. White: We have to establish the scope of the claims you rely on, and the only way we can establish that is by limiting everything that is not Shoemaker's invention.

(Question read.)

A. The frame members 12 in the Shoemaker patent, referring to Fig. 10, are contained in the cover of the luggage. Obviously, any structure for

(Testimony of Irving C. Roemer.)

winding clothes could be placed in the same cover of the same luggage if desired.

Mr. White: Q. In the same way?

A. Not the same way—not to perform the same function. You would have to take a particular structure and be sure it was made according to this structure.

Q. I say a particular type of structure; it must be operated exactly like the other element?

A. Can you make that a little clearer? I don't know what you are referring to.

Q. Are you referring to the particular structure, to the removable roller 30 on frame 12 in Fig. 10 when you say the difference between the prior art structures and the structure shown in Fig. 10—

A. I did not refer to a roller, no. I didn't refer to anything.

Q. You referred to some difference and it would have to be made in some exact shape, the prior art structures, in order to meet the terms of the Shoemaker patent.

Mr. Hursh: I would like to object to this type of cross-examination. He is trying to take Mr. Roemer and make an inventor out of him in light of the prior art. The prior art speaks for itself, and is limited to the exact structures disclosed in the prior art. You cannot change those a bit. You have to take the structure as disclosed in the prior art, you cannot take the prior art and change it and say what would happen if you did this or

(Testimony of Irving C. Roemer.)

that. [464] The prior art is limited to what is disclosed and Mr. White is trying to go outside the scope of the prior art.

The Court: All right. Proceed.

The Witness: Well, I am a little bit confused on the question but I thought I answered when I said whenever the structure of the prior art could be placed in the cover of the luggage, like in Fig. 10 of the Shoemaker patent.

Mr. White: Q. Without change?

A. Yes, if the luggage is large enough and there is room enough.

Q. You mean if small enough to fit within the confines of the cover? A. Yes.

Q. That could be placed in the same size of a suitcase, of a suitcase cover as shown in evidence by the various suitcases?

A. If they are the right exhibit, yes.

Q. Isn't it true that out of these numerous patents that we discussed at the trial only five were before the Examiner or cited by the Examiner in the File Wrapper during the prosecution of the Shoemaker application for the Shoemaker patent; I mean six?

A. Well, I was going to say I don't know the exact number, but I think it was about five or six.

Q. Well, the File Wrapper will show that. Outside of the difference that you mentioned as to the particular tension or sliding member, or action, as you stated, in the Koch prior structure shown in

(Testimony of Irving C. Roemer.)

Defendants' Exhibit S, is there any other difference, either in function or in structure, material difference that you can point out between the Koch prior structure and the prior Shoemaker patent, or the subsequent Shoemaker patent, especially referring to Exhibit 1 of that chart?

A. Referring to Exhibit L, there seems to be one rather material difference, that is in the size of the pivotal member which is upturned. [465]

The Court: What do you mean by that?

A. That the length of this folding member—

The Court: What length?

A. Fig. 2, when this frame was used originally, but if it were used in a suitcase, anything like that one, it wouldn't seem to take advantage of the shape of the suitcase, at all; in using it for folding in this manner these bar members would be down here in some way. I don't know of my own knowledge when they were used, but in folding them up in the cover you don't take the advantage of the full length of the cover. They are very short—I don't know—

The Court: Off about three inches?

A. About three or four inches, yes. That makes a difference of four times that much, that would be sixteen inches in folding a dress.

Mr. White: That is all.

Mr. Trabucco: I think that is all, your Honor.

Mr. Morsell: I want to take him on redirect.

(Testimony of Irving C. Roemer.)

Redirect Examination

Mr. Morsell: Q. In a structure such as Defendants' Exhibit L, while we are on the subject, can you see any justification for having the frame short and not taking full advantage of the size of the case in which it is installed?

A. No. I don't know of any possible reason for doing that.

Q. In arrangements of this type does inches added onto the length of the frame result in more inches of folding, one inch added—

A. Yes, four inches.

Q. It is multiplied four times, then?

A. Yes.

Q. Will you please refer to Fig. 11 of the Shoemaker patent in suit? In that structure there is disclosed a stud 37, is there not? A. Yes.

Q. And on that stud 37 there is a showing of a hanger 36; is that [466] true? A. Yes.

Q. I call your attention to a statement on page 3, lines 36 to 38, inclusive, of the specification, which read as follows:

“The stud 37 may be of such proportion as to accommodate and support a plurality of hanger rods 36.” Does that imply to you the contemplation by the inventor of mounting more than one hanger on the inner end of the folding frame?

A. Yes. That is exactly what it means.

Q. If the stud is of sufficient length can there be relative movement of the hangers on the stud in

(Testimony of Irving C. Roemer.)

the manner of the sliding of the bar in Plaintiff's Exhibit 6, for instance? A. Yes.

Q. In your estimation is the Shoemaker patent in the category of what is known as a combination patent?

A. Yes. The claims are directed to—all the claims are directed to a combination.

Q. A combination of a luggage comprising certain elements and additional garment-folding means within the means, that is the general combination, is that not true?

A. That is true.

Q. From your knowledge of patent law can a valid combination patent be predicated on a novel association of elements?

Mr. White: We object to that question, your Honor. I don't think the expert should testify as to what the patent law is. We have the Supreme Court for that.

The Court: I will have to apply the law.

Mr. Morsell: Q. Will you please refer to the Hopkins patent to which your attention was directed on cross-examination? How does that loading device in the Hopkins patent compare in bulk and possible weight with the simple mechanism of the Shoemaker patent shown in Fig. 1?

A. I should say it was a little larger and heavier than a supporting garment of the same size. When garments are placed on the device in the manner taught by the patent it would [467] be quite bulky.

(Testimony of Irving C. Roemer.)

Q. Does it occupy considerable space within the cover of the luggage case? A. Yes.

Q. And in so far as the Hopkins disclosure is concerned, if that was placed in the cover of a luggage case would means have to be provided for holding it in place within the cover?

A. Yes. They would have to be tied in or secured in in some way.

Q. In hand luggage it is a fact, is it not, that lightness of the piece of luggage is a very desirable feature? A. Yes.

Mr. Morsell: That is all.

(The case was then orally argued by respective counsel and briefs to be submitted in 30, 10 and 10 days.) [468]

[Endorsed]: No. 9693. United States Circuit Court of Appeals for the Ninth Circuit. The L. McBrine Company, Limited, Appellant, vs. Sol Silverman and Sam Silverman, co-partners doing business under the name and style of Balkan Trunk & Suitcase Co., Appellees. The L. McBrine Company, Limited, Appellant, vs. Herman Koch, doing business under the name and style of H. Koch & Sons, and Harold M. Koch, William L. Koch, and Rebecca Koch, Appellees. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 3, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 9693

THE L. McBRINE COMPANY, LTD.,

Appellant,

vs.

SOL SILVERMAN and SAM SILVERMAN, co-
partners doing business under the name and
style of BALKAN TRUNK & SUITCASE
CO.,

Appellees.

THE L. McBRINE COMPANY, LTD.,

Appellant,

vs.

HERMAN KOCH, doing business under the name
and style of H. KOCH & SONS, and HAR-
OLD M. KOCH, WILLIAM L. KOCH and
REBECCA KOCH,

Appellees.

ORDER OF CONSOLIDATION

Good cause appearing therefor, it is hereby or-
dered [469] that for the purpose of appeals in each
of the above entitled causes one Printed Record on
Appeal shall serve for both actions and may in-
clude pleadings, exhibits, and transcript of evi-

dence pertinent to both actions designated by counsel for the respective parties.

CURTIS D. WILBUR

United States Circuit Judge

Dated: Oct. 31, 1940.

[Endorsed]: Filed Oct. 31, 1940. Re-filed Dec. 3, 1940. Paul P. O'Brien, Clerk. [470]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF PARTS OF RECORD FOR PRINTING [471]

Now comes the above named appellant, and through its counsel, specifies that it desires to adopt as its points on appeal, the Statement of Points Relied Upon appearing in the transcript of the record.

It is also stated that appellant desires the record as certified to be printed in its entirety save for those items in the Designation of Contents of Record on Appeal which were specified as being physical exhibits.

THE L. McBRINE COMPANY LTD.

Appellant

By CURTIS B. MORSELL

Attorney

[Endorsed]: Filed Dec. 13, 1940. Paul P. O'Brien, Clerk. [472]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF EXHIBITS TO BE INCLUDED IN EXHIBIT BOOK [473]

The following exhibits are to be included in the printed book of exhibits:

Exhibit 1—Shoemaker patent No. 1,878,989.

Exhibit 7a—Photograph of H. Koch & Sons wardrobe case.

Exhibit 7b—Photograph of H. Koch & Sons wardrobe case.

Exhibit 8a—Photograph of Silverman wardrobe case.

Exhibit 8b—Photograph of Silverman wardrobe case.

Exhibit 13—Letters defendants admit as genuine.

Exhibit B—British patent to Schwarzenberger.

Exhibit C—British patent to Duverge.

Exhibit D—Austrian patent to Storch. (Two pages of specification must be photostated. We can supply photostatic copies of the drawing.)

Exhibit E—Copy of oath of Austrian patent to Storch, No. 116,893 (Include only the oath, omitting the Patent Office certification thereto.).

Exhibit F—Book containing following patents:

Exhibit F1—Burchess, No. 1,081,014

Exhibit F2—Boyd, No. 1,185,971

Exhibit F3—Fasel, et al., No. 1,382,964

Exhibit F4—Steuwer, No. 1,641,705

Exhibit F5—Winship, No. 1,728,223

Exhibit F6—Wheary, No. 1,799,877

Exhibit G—Book containing following patents:

Exhibit G1—Boden, No. 935,958

Exhibit G2—Simons, No. 1,208,221

Exhibit G3—Tiedeman, No. 1,435,673

Exhibit G4—Lengsfeld, No. 1,661,484

Exhibit G5—Lengsfeld, Re. 17,177

Exhibit G6—Hopkins, No. 1,861,274 [474]

Exhibit G7—Cuthbert, No. 1,184,931

Exhibit G8—Cahn, No. 1,572,703

Exhibit H—Book containing following patents:

Exhibit H1—Von Ohlen, No. 906,153

Exhibit H2—O'Donnell, No. 1,094,087

Exhibit H3—O'Neill, No. 1,150,058

Exhibit H4—Shroyer, No. 1,200,248

Exhibit H5—Langmuir, No. 1,698,848

Exhibit H6—Laprade, No. 1,742,656

Exhibit H7—Storch, No. 1,794,653

Exhibit H8—Pownall, No. 1,810,786

Exhibit H9—Hamlin, No. 1,869,418

Exhibit I—Levine patent No. 2,091,931.

Exhibit M—Production list of Larkin Specialty Co.

Exhibit N—Ledger sheet of Larkin Specialty Co.

Exhibit O—Duplicate bill rendered Koch & Son from Larkin Specialty Co.

Exhibit P—Photostatic copy of ledger sheet of June, 1928 sales.

Exhibit Q1—Defendants’ Interrogatories.

Exhibit Q2—Answer to Defendants’ Interrogatories.

This designation.

TOWNSEND & HACKLEY
ROY C. HACKLEY JR.

Dated: December 16, 1940.

Receipt of a copy of the foregoing designation is hereby acknowledged this day of, 1940.

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[Endorsed]: Filed Dec. 17, 1940. Paul P. O’Brien, Clerk. [475]

[Title of Circuit Court of Appeals and Cause.]

APPELLEES’ DESIGNATIONS OF PARTS OF
RECORD ON APPEAL FOR PRINTING
IN ADDITION TO THE DESIGNATIONS
OF APPELLANT UNDER RULE 19 (6)
OF THIS COURT.

Appellees hereby designate the additions to the record which appear necessary for the consideration of the appeal; [476] said parts to be printed from the record or reproduced in addition to those designations heretofore filed by Appellant.

1. Print from Exhibit A, file wrapper and contents, Shoemaker Patent #1,878,989 pages

21, 22, 23, 34, 37, 40, and 44. Include photo copies of page 11 of this same exhibit, or if page 11 is printed then all corrections and cancellations thereon shall be included.

2. Exhibit D—the certified translation of the Austrian Patent to Storch.

3. Exhibit E—copy of oath of Storch United States Patent, include the Patent Office certification thereto.

4. Exhibits M, N, O, and P—Please include photostatic copies of these exhibits.

5. Include from Reporter's transcript of trial: Line 26, page 90 through line 14, page 91.

6. In printing items 25 and 26 of Appellant's "Designation of contents of record on Appeal", namely the findings of fact and conclusions of law in these cases, please print the title page of said Findings inclusive the names of the attorneys appearing at the top of said page.

7. Please also print the title on items 25 and 26 of said designation, [477] the final decrees in these cases, showing the names of the attorneys on said title page.

8. Exhibit U (by photostat)

Dated: December 23, 1940.

GEORGE B. WHITE

J. E. TRABUCCO

Attorney for Appellant.

[Endorsed]: Filed Dec. 26, 1940. Paul P. O'Brien, Clerk. [478]

[Title of Circuit Court of Appeals and Cause.]

APPELLEES' SUPPLEMENTAL DESIGNA-
TION OF PARTS OF RECORD ON AP-
PEAL FOR PRINTING.

Appellees hereby designate further additions to the record which appear necessary for the consideration of the appeal, said parts to be printed from the record or reproduced [479] in addition to those designations heretofore filed herein.

The additions are as follows:

Print from Exhibit A, file wrapper and contents of patent in suit, in addition to the pages heretofore designated also pages 12, 13, 24, 25, 28, 29, 45, 47 to 55 inclusive, 64 to 69 inclusive, and 71 to 74 inclusive.

In printing these pages please show the corrections, interlineations and cancellation markings wherever they appear on said pages.

GEORGE B. WHITE

J. E. TRABUCCO

Attorneys for Appellees.

[Endorsed]: Filed Dec. 30, 1940. Paul P. O'Brien, Clerk. [480]

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S SUPPLEMENTAL DESIGNA-
TION OF PARTS OF RECORD ON AP-
PEAL FOR PRINTING [481]

In addition to the designations heretofore made by appellant and by appellees, appellant hereby designates further additions to the record which appear necessary for the consideration of the appeal.

The additions are as follows:

Print from Exhibit A, file wrapper and contents of patent in suit, in addition to the pages heretofore designated, pp. 46, 56, 57, 58, 59, 60, 61, 62, 63, and 78.

CURTIS B. MORSELL
HACKLEY & HURSH
ROY C. HACKLEY JR.
JACK E. HURSH

Attorneys and Counsel for
Appellant

Dated: January 2, 1941.

[Endorsed]: Filed Jan. 6, 1941. Paul P.
O'Brien, Clerk. [482]